Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 848

MARY W. STEWART, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 8, 1942.

CERTIORARI GRANTED FEBRUARY 16, 1942.

TRANSCRIPT OF RECORD

In Five Volumes

Supreme Court of the United States

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MARY W. STEWART, et al.,

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vs.

UNITED STATES OF AMERICA,

Respondent.

VOLUME I

(Pages 1 to 354)

Pleadings

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

No. 9507

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY W. STEWART, et al.,

Appellees.

Transcript of Record

In 4 Volumes

VOLUME I

(Pages 1 to 354)

Pleadings

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO 10-5-5-40

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In the District Court of the United States for the Northern District of California, Southern Division

In Equity—No. 2685-S

UNITED STATES OF AMERICA,
Complainant,

vs.

MARY W. STEWART, EVADNE B. MIDDLEMAS, LOUISE DeVOE BRICKELL, HOWARD BRICKELL, IDA M. BRICKELL, Heirs and Distributees of JOHN C. BRICKELL, Deceased, RUSS INVESTMENT CO., a corporation, SEARS POINT TOLL-ROAD CO., a corporation, FRANK E. KNIGHT, HENRY A. KENDALL, JOSEPH DUBEAULT, WILFRED DUBEAULT, CHARLES J. MONAHAN, W. H. HEALY, JAMES IRVINE, CALIFORNIA PACIFIC REALTY CO., a corporation, BAY LAND CO., a corporation, FIELD AND TULE LAND

CO., a corporation, PACIFIC GAS AND ELECTRIC CO., a corporation, AMERICAN TRUST CO., a corporation, CALIFORNIA PACIFIC TITLE AND TRUST CO., a corporation, WEST END LAND CO., a corporation, AMERICAN SECURITIES CO., a corporation, HENRY CLAUDE KETTLEMAN, C. D. HILLMAN, sued as First Doe, JAMES CLAYTON, sued as Second Doe, E. G. SWANBERG, sued as Third Doe, A. O. STEWART, husband of Mary W. Stewart, sued as Fourth Doe, J. C. AITKEN, sued as Fifth Doe, H. V. CASEBOLT, sued as Sixth Doe, H. W. DAVIS, sued as Seventh Doe, Eighth Doe, Ninth Doe, EDMUND BURKE, sued as Tenth Doe; also all other persons unknown claiming any right, title, estate, lien, or interest in the real property described in the Complaint, adverse to Complainant's title thereto,

Defendants.

AMENDED BILL OF COMPLAINT

Comes now the United States of America, by its Solicitor, acting under the instructions and at the direction of the Attorney General of the United States, and, by leave of the Court first had and obtained, brings this Amended Bill of Complaint against the defendants, and [1*] alleges:

*Page numbering appearing at top of page of original Certified Transcript of Record.

I.

That the places of residence of the known defendants are as follows:

Each of said individual defendants, as well as the defendants sued herein under fictitious names, reside in the City and County of San Francisco, in the Southern Division of the Northern District of California, save and except, Evadne B. Middlemas, who resides at Menlo Park, San Mateo County, California; Frank E. Knight, Henry A. Kendall, Joseph Dubeault, Wilfred Dubeault, and Charles Monahan, each of whom resides in or near Eureka, Humbolt County, California; C. D. Hillman, sued herein as First Doe, who resides at Seattle, State of Washington; Henry Claude Kettleman, whose residence is wholly unknown; James Clayton, sued as Second Doe, E. G. Swanberg, sued as Third Doe, J. C. Aitken, sued as Fifth Doe, H. V. Casebolt, sued as Sixth Doe and H. W. Davis, sued as Seventh Doe, each of whom reside in or near Vallejo, Solano County, California; and Edmund Burke, sued herein as Tenth Doe, who resides at Los Angeles, California.

Each of said corporate defendants is a corporation organized under and by virtue of the laws of the State of California and has its principal place of business in the City and County of San Francisco in the Division and District aforesaid, save and except the Russ Investment Co., a corporation, which has its principal place of business at Eureka, Humboldt County, California.

II.

That the complainant, United States of America, is the owner of, and has since the year 1852, occupied as a part of the Mare Island Navy Yard Reservation for [2] public, to-wit: military and naval purposes, and has been and is entitled to the possession of the following described land, to-wit:

Those certain lands situated in the Counties of Napa and Solano, in the Northern District of California in Townships 3 and 4 North, Range 4 West and in Townships 3 and 4 North, Range 5 West, M. D. B. and M. including all of the lands embraced in State Swamp Survey No. 569, Solano County, wherein the land is particularly described as follows:

Beginning at a stake on the west bank of Napa Bay, 72 Chains West of the northeast corner of section 34 township 4 north range 4 west; thence west along the section lines 328 Chains to a stake on the south bank of Huichica Creek, now Napa Slough, at the northeast corner of Section 35 township 4 north range 5 west; thence along said bank of said creek as follows:

North 84¾° west 35 chains, north 75° west 42.50 chains, south 84¼° west 39 chains; thence south 60° west 17.50 chains to section line; thence south 55° west 11.50 chains, south 22° west 13.50 chains to the county line of Napa and Solano Counties; thence south 4° west 10.70 chains to San Pablo Bay; thence south

44¾° east 15.10 chains, south 67° east 38.10 chains, south 75° east 42.80 chains, south 61° east 76.30 chains, south 63¾° east 42.80 chains, south 69° 10′ east 61 chains, south 67° 40′ east 63.87 chains, south 68¼° east 57.20 chains, south 65° 20′ east 45.20 chains, south 66¼° east 68 chains, south 80° east 40.50 chains to the west line of Swamp Land Survey No. 34; thence north along said last line 22.33 chains to a point 20 chains south of the center of Section 10, township 3 north range 4 west; thence east along the north line of said survey 30 chains to the west bank of Napa Bay; thence along said bank north 12¾° west 20.30 chains to the mouth of Dutchman Slough; thence north 2½° west 85 chains to south Slough, north 34½° west 12 chains, north 75° west 17 chains, north 25° west 43 chains, north 12½° west 63.50 chains to the place of beginning containing 7413.48 acres more or less, together with all accretions, natural or artificial, to said lands or any part thereof.

(a) In said State Survey said lands are further designated and described as being:

"Fractional section 3, Entire 4, 5, Fractional 6, 7, 8 and 9, W. Frl. ½, W. frn. of NE ¼, and N. frn. of SE ¼ of 10, and small frns. in NE ¼ [3] of NW ¼ of 15, T 3 N, R 4 W. Frl. Sections 1 and 2 in 3 N, 5 W. Entire Sections 31, 32, 33 and W. frl. ½ of 34, T 4 N, R 4 W. S. frn. of SE ¼ and S frn. of SW ¼ of 26

S frn. of SW 1/4 and S Frn. of SE1/4 of 27 and Fractional sections 34 and 35 and Entire 36 in T 4 N, R 5 W, Base and Meridian of Mount Diablo, containing 7413.48 acres."

(B) Upon the officially accepted and approved United States township plats and lands are represented and shown as being:

Fractional sections 3, 4, 5, 6, 8, 9, 10, 15 and 16, T. 3 N., R 4 W. Fractional Sections 31, 32, 33 and the part of Section 34 west of Napa River, T 4 N., R 4 W. Fractional Section 1 T. 3 N., R. 5 W. The parts of Sections 26 and 27 South of Huichica Creek also called Napa Slough, the part of Section 34 East of Sonoma Creek and fractional sections 35 and 36, T. 4 N., R. 5 W., all M. D. B. and M., together with all accretions natural, or artificial to said lands or any part thereof.

III.

By an instrument dated May 2, 1841, executed by Juair B. Alvarado, Constitutional Governor of the Department of California, a grant was duly made by the Government of Mexico to one Victor Castro of the land above described, a copy of which said grant is hereto annexed, marked Exhibit "A" and made a part of this Bill of Complaint, said instrument was filed for record in the office of the County Recorder of and for Sonoma County, California, on July 28, 1852, and George W. P. Bissell, and William H. Aspinwall having succeeded to the rights and title of said Victor Castro under said

grant, on August 31, 1852, filed in the office of the Board of Land Commissioners, empowered to ascertain and settle private land claims in the State of California, their petition seeking the confirmation to them of their title to the lands included in said grant to Victor Castro as set out herein. Such [4] proceedings were thereupon had before said Board of Land Commissioners including the *take* of evidence, that a decree was duly given, made and entered by said Board, confirming to the said petitioners, their right, and title in and to the lands included in said grant, said decree of confirmation being in the words and figures following:

"No. 307. George W. Bissell, et al., v. The United States.

Decree of Confirmation.

In this case after the hearing the proofs and allegations, it is adjudged by the Commission that the claim of the said petitioners is valid, and it is therefore *decree* that their application for a confirmation thereof be allowed.

"The place of which confirmation is hereby given is situate in the Bay of San Francisco and is called 'Isla de la Yegua' or Mare Island and being an Island is bounded by the water's edge."

Filed in office May 8, 1855.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners."
GEORGE FISHER,
Sec'y.

IV.

That the said Board of Land Commissioners was vested with power and authority to make such confirmation by the Act of Congress approved March 3, 1851, (9 stats. 631) and pursuant to the terms of section 8 of which Act said petitioners, Bissell and Aspinwall, claiming said Mare Island in California under right and title derived from the Mexican Government did present the same to the said Board of Land Commissioners, together with evidence in support of such claim and said Board thereupon did pass upon the evidence so produced and upon the evidence produced in behalf of the United States, and did determine the validity of such claim, and did thereafter, on October 23, 1855, file a certified transcript of said case and of their proceedings and decision with the clerk of the United States District Court for the Northern District of California.

That pursuant to the terms of sections 9 and 10 of said Act, the United States, by its District Attorney, duly presented its petition to the United States District [5] Court for the Northern District of California, the District in which said land was situated, praying a review of said decision and decree of said Board of Land Commissioners, and for a decision on the validity of said claim and duly complied with the law and requirements governing such petition for review. And the said George W. P. Bissell, and William H. Aspinwall, filed their Answer thereto and thereafter such proceedings

were had in such matter that on March 8, 1857, the said District Court of the United States for the District of California, duly gave and made its Order for Judgment in said cause, confirming the said grant and the said decision of the said Board of Land Commissioners, and thereafter on April 15, 1930, the District Court of the United States for the Northern District of California, the successor to said Court duly gave and made its judgment and decree, confirming said decision and decree of said Board of Land Commissioners, and directing the entry of said decree nunc pro tunc as of the second day of March, 1857. Defendants are remote claimants under, successors to, and in privity with, the United States of America, plaintiff and appellant in said appeal from the decision of said Board of Land Commissioners, against which plaintiff and appellant said judgment and decree was entered with respect to paramount title then and there asserted and claimed by said plaintiff and appellant, and defendants are bound by said decree.

V.

The United States of America acquired the title and interest of George W. P. Bissell and William H. Aspinwall [6] in and to the land so conveyed and confirmed to them, and also the title and interest of Mary S. McArthur in said land, as a tenant in common with the said Bissell and the said Aspinwall, by purchase for a valuable consideration, namely: $83,491.00, and received a deed of convey-

ance of said property executed January 4, 1853, a copy of which, hereunto annexed and marked Exhibit "B" is referred to and made a part of this Bill of Complaint. And said deed was duly filed for record and recorded in the County Recorder's office of Solano County, California on April 18, 1853, said Solano County being then and thereafter the County in which said lands were situated.

VI.

On November 6, 1850, the President of the United States by executive order, exempted and reserved from sale, for public purposes, among others, the following tract of land on the eastern side of the Bay of San Pablo, namely "Mare Island" which included the lands described in Paragraph II of this Bill of Complaint.

VII.

On February 9, 1853, the Secretary of the Navy of the United States of America, acting under and in pursuance of Section 3 of the Act of August 31, 1852, (10 stats. 104) selected the tract of land in the Bay of San Francisco, bounded by the Bay of San Pablo, the straits of Carquinez and Napa Creek, known as Mare Island, together with all its appendages of tule or marsh land ordinarily reported to belong to said island and the harbors, waters and anchorages connected therewith and necessary to the use of the same, and within which is included the lands and premises described in paragraph II of this Bill, as a site for the Navy

Yard and Naval [7] Depot provided for by said Act of Congress.

Following said selection, the Secretary of the Navy on February 9, 1853, recommended to the President of the United States, that said land and premises be reserved for public uses, and on February 11, 1853, President Millard Fillmore approved said recommendation and made said reservation and said reservation was communicated to the Secretary of the Interior and duly and properly recorded.

A copy of the aforementioned selection of said tract and recommendation of the Secretary of the Navy, together with the approval of the President of the United States and his order making such reservation is attached hereto, marked Exhibit "C" and hereby referred to and incorporated in this Bill of Complaint. From time to time, the Congress of the United States of America, duly approved, ratified and confirmed said reservations and by various statutes, appropriated large sums to improve the lands comprised therein and authorized their improvement.

VIII.

The lands and premises described in Paragraph II of this Bill of Complaint are included within the boundaries and are a part of the lands and premises described and conveyed by said grant of Juan B. Alvarado, Governor of California under the rule and occupation of Mexico, to Victor Castro, confirmation of which grant was made by the

Board of Land Commissioners to George W. P. Bissell and William H. Aspinwall and are included within the boundaries of and are a part of the lands and premises purchased by the United States from said Bissell [8] and Aspinwall and their co-grantor Mary S. McArthur, as hereinbefore alleged.

IX.

Ever since September 16, 1852, the United States has occupied the lands of Mare Island as aforesaid, by and through its Navy Department and officials, using and improving the same for military purposes in connection with the Naval Station, Navy Yard and premises of complainant situated thereon.

The possession of the United States of America has at all times been actual, open, adverse and exclusive and under claim of right, and of absolute ownership in fee of said Mare Island, and under the title and color and claim of title supplied by said reservations and the said deed of January 4, 1853, the said decision of the said Board of Land Commissioners of May 8, 1855, and the said Order of the said District Court of the United States for the District of California duly given and made March 2, 1857, and said Decree of April 15, 1930. The lands of Mare Island during such period and occupancy of the complainant have been improved for military and naval purposes by the construction of buildings and improvements thereon. Said build-

ings and improvements are now used by complainant for naval and military purposes and have been so used since the construction and making thereof; and there was about the year 1873, located upon the land here in question, a dwelling house erected, maintained and occupied by and on behalf of the complainant; a road thereon had been built and used under the authority of complainant; and complainant has used the lands in [9] question for gun range and target practice and has from time to time excavated and dug in said lands and used them for sand and gravel pits, and as a source of supply for such sand and gravel as complainant has required for its use in connection with its use and occupancy of said Naval Reservation. All said real property was used by the complainant in connection with the operation and activities of its Naval and Military forces. In November, 1873, complainant went upon said land described in Paragraph II and posted at frequent intervals thereon, signs and notices that said property was government property, and warning trespassers to keep off thereof.

X.

The lands in question heretofore described in Paragraph II hereof, were claimed by the State of California, under and by virtue of the Act of September 28, 1850, (9 Stats. 519) commonly known as the "Swamp Land Act", by which the whole of those Swamp and Overflowed Lands, made thereby unfit for cultivation, comprising part of the public

domain of the United States of America on the date of the passage and approval of said Act, and remaining unsold, were granted to the State. Said lands were purportedly surveyed in the year 1869 under authority of the State of California, and identified by such survey as survey No. 569 and as containing 7413.48 acres in area, and thereafter the State of California issued its patent purporting to convey said lands included in said survey to George W. Pearson, under date of April 7, 1874, and describing them according to said Survey No. 569.

[10]

XI.

Defendants, and each of them, claim title to the lands described in said survey and in Paragraph II of this Bill through and by virtue of mesne conveyances, vesting in them the purported title of the said George W. Pearson, or some part or parcel thereof. Defendants and each of them claim some right, title or interest in said real property adversely to the right and title of plaintiff, but each of said claims is wholly without right or foundation in law or fact; that there are other persons to complainant unknown claiming some right, title, estate, lien or interest in the real property described in Paragraph II of this complaint, adverse to the complainant's ownership, and casting a cloud upon the complainant's title therein; that the claims of said persons are wholly without right or merit in law or in fact.

That complainant is without information as to the dates, tenure and contents of the instruments constituting evidence of the alleged title of the defendants other than as stated herein and is unable therefore to set out herein such instruments held by them.

XII.

That on April 26, 1924, a patent, No. 937055, was issued to the State of California, which patent is in effect, an attempted conveyance of the lands in Townships 3 and 4 North, Range 4 West, M.D.B. and M., described in subparagraph B of paragraph II of this complaint, to the State of California, by the Land Department Officials of the United States, under the provisions of the Act of September 28, 1850, known as the "Swamp Land Act"; that on June 5, 1896, a patent No. 72, was issued to the State of California, which patent is in effect, an attempted conveyance of all of fractional [11] Section 1, Township 3 North, Range 5 West, M.D.B. and M. containing an estimated area of 177 acres, described in subparagraph B, Paragraph II of this Complaint, to the State of California by the Land Department officials of the United States, under the provisions of said "Swamp Land Act;" and that on February 7, 1910, a patent, No. 152, was issued to the State of California, which patent is in effect, an attempted conveyance of the lands in Township 4 North, Range 5 West, M.D.B. and M., described in subparagraph B of Paragraph

II of this Complaint, to the State of California, by the Land Department officials of the United States under the provisions of said "Swamp Land Act;" that each of said above mentioned three patents included and described other lands and tracts not described in Paragraph II of this Complaint and not involved in this suit.

Complaint alleges that each and every one of said above mentioned three patents, in so far as said patents purport to grant or convey, and to the extent that said patents include and describe the lands mentioned in Paragraph II of this Complaint, were and are void, of no force or effect, and have no validity, for the reason that said lands described in said patents were held in private ownership under and by virtue of the aforesaid grant from Mexico at the time of the passage and approval of said "Swamp Land Act," and were not a part and never have been a part of the public domain of the United States or open for entry by private persons, but have at all times since the date of said Mexican grant to Victor Castro, been owned and occupied by complainant as proprietor and by those under whom the complainant claims its proprietary ownership thereof, and for the further reason that said land had been selected for and devoted to the necessary public purposes [12] of the United States and withdrawn from entry by private persons as alleged in Paragraphs VI and VII of this Bill of Complaint, prior to the issuance of said patents to the State of

California, and while the legal title in and to said lands was vested in the United States of America.

XIII.

The true names of defendants sued herein as Eighth and Ninth Doe, and the interest claimed by them respectively to the lands described in Paragraph II of this complaint, are unknown to complainant, and complainant prays that when their true names and the interests claimed by them respectively are ascertained, they may be inserted herein with the same effect as if such defendants were sued in such true names originally.

XIV.

Complainant is without adequate remedy in the premises at law; wherefore that the defendant may full, true, direct and certain answer make to each and all of the allegations and averments in this Amended Bill of Complaint but not under oath, complainant prays:

(1) That the Court adjudge and decree that plaintiff is the owner in fee simple, absolute and possessed of all the real property described in Paragraph II of this Amended Bill of Complaint.

(2) That the Court adjudge and decree that neither the defendants nor any of them ever acquired or now have any right, title or interest in or to the lands described in Paragraph II of this Complaint or any part thereof by reason of the purported patents, conveyances, or instruments mentioned and referred to herein.

(3) That defendants be required to answer and [13] set up the conveyances, instruments, or evidences of title under which they claim, and that the Court adjudge and decree that said conveyances and instruments through and by virtue of which defendants claim to derive a right, title and interest in the lands in question under George W. Pearson, patentee, from the State of California and his grantees, are void and that each such conveyance made to date held by the defendants, be surrendered for cancellation.

(4) That the title in and to the lands described in Paragraph II of this Amended Bill of Complaint, be quieted in the Complainant as against all or any adverse claims of the defendants herein or any of them.

(5) That complainant have such other, further or different relief in the premises as may be agreeable to equity and good conscience.

GEO. J. HATFIELD,
United States Attorney,
Solicitor and Attorney
for Complainant. [14]

United States of America,
Northern District of California,
City and County of San Francisco—ss.

Elisha B. Carrier, Special Assistant to the United States Attorney for the Northern District of California, being first duly sworn on oath deposes and says:

That he is one of counsel for the complainant herein and that he has read the foregoing Amended Bill of Complaint and knows the contents thereof and that he verily believes the same to be true.

ELISHA B. CARRIER.

Subscribed and sworn to before me this 28 day of April, 1931.

[Seal] J. A. SCHAERTZER,
Deputy Clerk, U. S. District Court,
Northern District of California. [15]

Exhibit "A"

Translation of Title

Manuel Jimeno Casarin Governor ad interim of the Department of the Californias.

(Civil Govt. of Upper California.)

Don Victor Castro is provisionally permitted while the usual steps are being taken, to occupy with horses the Island named "La Yegua" in the Straits of Carquenez.

In consequence let this permission me delivered to the party interested for his security.

Mouterey, Oct. 31, 1840 (signed) Jimeno

(signed) JOSE Z. FERNANDEZ,
Sec. ad interim.

Juan B. Alvarado, regular Constitutional Governor of the Department of the Californias.

Whereas Don Victor Castro a Mexican by birth has petitioned to this Government for the ownership of the Island named "La Yegua" situated in the neighborhood of the Straits of Carquinez in Consequences of which the foregoing permission was granted him by Senor Don Manuel Jimeno Casarin, for the time being, in charge of this Government, and in virtue of which the petitioner has repeated again his petition, proving that said Island does not belong to the ownership of any individual, corporation, pueblo, I have in decree of this day declared as I do by these presents declare Don Victor Castro, owner in fee of the said Island in all its extent comformably with the powers conferred on me by the Supreme National Government. In consequence let this be delivered to the party interested, that it may serve him for a title, and for [16] such other purposes as may be convenient.

Given in Monterey, Capital of the Department on the Second Day of the Month of May, 1841.

(Signed) JUAN B. ALVARADO. [17]

Exhibit "B"

To all to whom these presents shall come:

George W. P. Bissell, of the city of San Francisco, in California, William H. Aspinwall of the city of New York, in the State of New York, and

Mary S. McArthur, of the city of Baltimore, Maryland, send greetings:

Whereas the said parties, as tenants in common, are owners and proprietors of a tract of land usually known as Mare Island in California, now recently surveyed and agreed to be purchased for the purpose of a navy yard, and for the public use, on behalf of the United States of America, and which has recently been selected for such purpose; and the interests and proportions of the said owners respectively, in the said island, are as follows, that is to say: Of the said George W. P. Bissell, fifty-eight eightieth parts and one-fourth of an eightieth part (the whole being divided into equal eightieth parts); the said William H. Aspinwall, sixteen and three-fourths eightieth parts, and the said Mary S. McArthur, as sole devisee of William P. McArthur, deceased, of the remaining five eightieth parts.

And they have agreed to convey the same to the use of the United States of America, for the consideration hereinafter expressed paid to them severally and respectively, according to their several and respective interests aforesaid with the exception hereinafter expressed.

Now these presents witness: That the said George W. P. Bissell, William H. Aspinwall and Mary S. McArthur, in consideration of the sum of eighty-three thousand four hundred and ninety-one dollars, to them paid, in proportion to their said interests respectively, on behalf of the United States of America, the receipt of which is hereby acknowledged, have granted, bargained and sold, released

and quit-claimed, and by these presents do grant, bargain, sell, release and quit-claim unto the United States, all that tract of land and island called and known as Mare Island, in the Bay of San Pablo, as recently surveyed by the board of officers of the United States sent to California for the selection of a site for the navy yard there, including all the tule or lowland, and marsh, belonging to the same, or which has ever been reputed or claimed to belong to the same, and all the waters, harbors, bays creeks, and other waters, privileges, benefits, advantages, tenements, hereditaments and appurtenances thereunto belonging (excepting only as hereinafter is expressed), with the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To have and to hold the same to the United States of America and their assigns forever, with the mutual agreements that the said grantor shall have the right of establishing a ferry to and from the said island across the Napa Creek, the location of which ferry on the shore of the mainland shall be where the grantors, their heirs and assigns shall select, with the assent and approval of the Secretary of the Navy of the United States, for the time being, on the report of the officer or officers at the time representing the Navy Department at San Francisco; for the landing of which ferry, on the said island, a piece of [18] land on the margin and shore of the said island, to be selected and located by the said grantors, their heirs and assigns, with such assent and approval as last afore-

said; however, ferry privilege and landing place shall be subject to the following control and restrictions, on the part of the United States:

That the said ferry and landing place shall at all times, for the purpose of police and the regulations of persons and things in the navy yard, be subject to such orders as the Secretary of the Navy, or the proper officer of the United States or of the Navy Department shall from time to time establish for the safety of the public property or the good government of the said navy yard and Mare Island; and also, that no building of any kind shall be erected on the landing place without such consent as aforesaid; and also if the Secretary of the Navy, for the time being shall for the security or advantage of the United States, in reference to the said public use of Mare Island, require a removal of the said ferry landing to any other convenient place on the eastern shore of said Mare Island, for the purpose of such landing place, the landing of the said ferry shall be removed to such new landing place, and the ferry privilege shall apply to such new landing place, and all other terms hereof in relation thereto; and soon, from time to time, as changes in this respect may be found necessary on part of the United States; and on every such change it shall be lawful for said grantors, their heirs and assigns to remove any buildings which they may have erected with any fixtures for the purpose of the ferry and on the direction of the Secretary of the Navy, for the time being, it shall be the duty of the said

grantors, their heirs and assigns to conform to such removal with all convenient speed. And the said grantors, for themselves, according to their several interests aforesaid, and each for his heirs and assigns, and for all claiming by or under them respectively, hereby severally covenant to and with the United States of America and their assigns, that they severally, and their heirs and assigns, shall and will, at the request of the United States of America or their assigns, and at their expense execute all such further deeds and other assurances unto them of the premises hereby purporting to be granted, as shall be reasonably advised by their counsel learned in law.

In witness whereof the said George W. P. Bissell, by William H. Aspinwall, his attorney (by letter of attorney dated July 30th, 1852, herewith delivered), and the said William H. Aspinwall and Mary S. McArthur have hereunto set their hands and seals the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-three.

[Seal] G. W. P. BISSELL,
Pr. WM. H. ASPINWALL,
Att'y.

[Seal] WM. H. ASPINWALL.

[Seal] MARY S. McARTHUR.

Signed, sealed and delivered in the presence of:
WM. MARRIA,
J. O. LAWRENCE,
J. D. PRATT,
JNO. J. YOUNG.

As to Mary S. McArthur. [19]

State of New York,
New York City and County.

I, Joseph C. Lawrence, commissioner in and for the State of New York, duly appointed and commissioned by the Governor of the State of California to take the acknowledgments and proof of deeds and other instruments of writing under seal; to be used or recorded in same State of California, and to administer oaths and affirmations, do hereby certify that on the day of the date hereof before me personally came William H. Aspinwall, in his individual capacity and as the attorney in fact of George W. P. Bissell, the persons described in and who executed the foregoing deed of conveyance, and acknowledged that he had executed the same in his individual capacity and as the attorney in fact of George W. P. Bissell, one of the parties therein described, by virtue of a power of attorney, duly executed by the said George W. P. Bissell, for the purposes therein mentioned. And I further certify that the persons who made the said acknowledgment are personally known to me to be the persons described in and who executed the said deed.

Given under my hand and official seal this fourth day of January, in the year of our Lord one thousand eight hundred and fifty-three.

[Seal] JOSEPH C. LAWRENCE,
Commissioner of the State of California, in and for the State of New York, 68 Water Street, New York.

State of Maryland,
City of Baltimore—ss.

On this 5th day of January, A. D. 1853, before me, Jabez D. Pratt, a commissioner appointed by the Governor of the State of California in and for the State of Maryland to take the proof and acknowledgment of deeds, etc., personally appeared Mary S. McArthur, one of the grantors to the within deed of conveyance and personally known to me, and having signed and sealed the same before me, acknowledged the same to be her free act and deed and desires the same might be recorded as such.

In witness whereof I have hereunto set my hand and affixed my official seal on the day and year last aforesaid.

JABEZ D. PRATT,
Commissioner for California.

State of California,
County of Solano—ss.

The foregoing instrument of writing was received by me for record on the 18th day of April, A. D. 1853, at 9 o'clock a.m.

JAS. P. VAUGHN,
County Recorder. [20]

EXHIBIT "C"

Navy Department
February 9th, 1853

Sir:

By the 3rd Section of the Act of last Session, Chapter CIX Statutes at large, making appropriations for the Naval Services, the Secretary of the Navy is "authorized, and directed to select a site for a Navy Yard and Naval Depot in the Bay of San Francisco, in California or neighboring waters either by purchase or reservation of Public Lands."

I have the honor to inform you that acting in pursuance of this authority, I have it in contemplation to select Mare Island, in the Bay of San Francisco as the Site for the Navy Yard and Depot referred to in the above act.

Negotiations have been in progress for the purchase of this island and its appendages for some time past. An investigation of the title which has been offered to the United States by those claiming to own this island, has led to some doubt whether the Government does not already possess the paramount right to the occupation and use of the island. My own opinion is that whether the title shall be found to exist in the United States or not, it is proper that the government should reserve the land for public use and thus assert a title which will, at least, serve to strengthen any other which may ultimately be purchased.

The Act of Congress referred to, authorizes the reservation, if it may be thought expedient to make

it, in case this land should belong to the public domain. [21]

I have therefore respectfully to ask, if you should concur in the propriety of making the reservation, that you will be pleased to give the necessary orders to that end, and direct that the tract of land in the Bay of San Francisco bounded by the Bay of San Pablo, the Straits of Carquines and Napa Creek, known as Mare Island, together with all its appendages of Tule or Marsh land ordinarily reported to belong to said island, and the harbors, waters and anchorages connected therewith and necessary to the use of the same, be reserved to the United States for public uses.

You will find accompanying this note a map or chart of the said tract called Mare Island, which will indicate its position in the Bay of San Francisco and the waters connected therewith.

I have the honor to be, with the highest respect,

Your Obt. Servt.,

JOHN P. KENNEDY.

To the President

Washington, February 11, 1853

The Reservations above recommended are hereby made and the Secretary of the Navy will communicate that fact to the appropriate Department that the Reservation may be properly and legally recorded.

MILLARD FILLMORE.

[Endorsed]: Filed May 21, 1931. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[22]

In the District Court of the United States for the Northern District of California,
Northern Division.

Equity Suit No. 483

[Title of Cause.]

ORDER FOR TRANSFER OF SUIT TO SOUTHERN DIVISION.

It is hereby ordered, that the above entitled Equity Suit be, and the same hereby is, transferred from the Northern Division to the Southern Division of the United States District Court for the Northern District of California pursuant to the written stipulation of the Solicitors and Attorneys of record duly signed and filed herein according to the provisions of Section 58 of the Judicial Code (Section 119, U. S. C. A.), and that the Clerk of this Court regularly transmit the entire file and all the papers and documents, in conformity with law, to the Clerk of the Court for said Southern Division.

Dated: Sept. 8th, 1930.

Signed FRANK H. KERRIGAN,
Judge of United States District Court.

[Endorsed]: Filed Sep. 8, 1930. [23]

In the District Court of the United States for the Northern District of California,
Southern Division.

In Equity—No. 2685-S

[Title of Cause.]

AMENDMENTS TO AMENDED BILL OF COMPLAINT

Leave of the Court first had and obtained, plaintiff above named, by Geo. J. Hatfield, Esq., United States Attorney, its attorney and solicitor, files this Amendment to its Amended Bill of Complaint to add thereto a paragraph numbered IV (a).

IV (a).

In July, 1877, the Surveyor General of California in compliance with the Thirteenth Section of the Act entitled "An Act to ascertain and settle the private land claims in the State of California," approved March 3, 1851, caused said private land claim for Mare Island to be surveyed and a plat to be made thereof, and thereafter gave notice that the same had been done by publication once a week for four consecutive weeks in two newspapers, one published in the City of San Francisco, to-wit, the Alta California, and one published near the land surveyed, to-wit, the Vallejo Evening Chronicle published in the City of Vallejo, County of Solano, State of California, and retained in his office, for public inspection, [24] the survey and plat until ninety days from the date of the first publication in

San Francisco expired; that no objections were made to said survey, and the said Surveyor General of California approved the same and transmitted a copy of the survey and plat thereof to the Commissioner of the General Land Office at Washington, for his examination and approval; thereafter the Commissioner of the General Land Office approved said survey and plat and caused the same to be filed in a jacket, called the Mare Island Jacket, in the file of military reservations in the General Land Office; thereafter on September 22, 1905 the Commissioner of the General Land Office expressly approved, used and acted on the said survey and plat, and thereafter on September 28, 1905 the Secretary of the Interior expressly approved and concurred in said action of the Commissioner of the General Land Office, and approved, used and acted on the said survey and plat; that the lands described in Paragraph II of Plaintiff's Amended Bill of Complaint are all included within the exterior limits of said survey and of said confirmed Spanish Grant of Mare Island, as so surveyed.

Paragraph IX of Plaintiff's Amended Bill of Complaint is hereby amended to read as follows:

IX.

Continuously since September 16, 1852, and up to and including the year 1880, the United States occupied the lands of Mare Island as aforesaid, by and through its Navy Department and officials, using and improving the same for military purposes

in connection with the Naval Station, Navy Yard and premises of plaintiff situated thereon.

The possession of the United States of America during all said period was at all times actual, open, adverse [25] and exclusive and under claim of right, and of absolute ownership in fee of said Mare Island, and under the title and color and claim of title supplied by said reservations and the said deed of January 4, 1853, the said decision of said Board of Land Commissioners of May 8, 1855, and the said order of the said District Court of the United States for the District of California duly given and made March 2, 1857, and said Decree of April 15, 1930, by relation. The lands of Mare Island during such period and occupancies of the plaintiff were improved for military and naval purposes by the constuction of buildings and improvements thereon and of signs warning trespassers that the said premises were Government property. There was about the year 1873 located upon the land here in question, a dwelling house erected, maintained and occupied by and on behalf of the plaintiff; a road had been built thereon and used under the authority of plaintiff; and plaintiff used the lands in question for gun range and target practice, and from time to time excavated and dug in said lands and used them for sand and gravel pits, and as a source of supply for such sand and gravel as plaintiff required for its use in connection with its use and occupancy of said Naval Res-

ervation. All said real property was used by plaintiff in connection with the operation and activities of its Naval and Military forces. In November, 1873, plaintiff went upon said land described in Paragraph II and posted at frequent intervals thereon signs and notices that said property was Government property and warning trespassers to keep off thereof.

That on the 8th day of July, 1886, or thereabouts, the Circuit Court of the United States for the District of California, in an action of ejectment therein pending, and [26] numbered 3140 in the records and files of said Court, in which the plaintiff was not a party or represented, and in which San Francisco Savings Union, a corporation, and others were plaintiffs, and John Irwin, then Commandant of Plaintiff's said Navy Yard, was defendant, gave and made a judgment in favor of said plaintiffs and against said defendant for the recovery by said plaintiffs from said defendant of the possession of said lands in Paragraph II of said Amended Bill of Complaint described, and in consequence of said judgment, said defendants and their predecessors have entered upon and occupied said land and withheld the possession thereof from plaintiff, without the consent and through no fault of plaintiff, and defendants have no other entry or right of entry, or possession, except after said judgment.

Wherefore, plaintiff prays that the said paragraph numbered IV (a) be deemed added to Plaintiff's Amended Bill of Complaint, and that said

Paragraph IX as hereinabove set forth be substituted for Paragraph IX of Plaintiff's Amended Bill of Complaint.

GEO. J. HATFIELD,
United States Attorney,
Attorney and Solicitor for Plaintiff. [27]

United States of America,
Northern District of California,
City and County of San Francisco—ss.

I. M. Peckham, being first duly sworn, deposes and says:

That he is an Assistant United States Attorney, and is familiar with the facts in the above entitled action, and makes this verification on behalf of the United States of America; that he has read the foregoing Amendments to the Amended Bill of Complaint, knows the contents thereof, and that the same are true of his own knowledge except as to matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

I. M. PECKHAM.

Subscribed and sworn to before me this 13 day of May, 1932.

[Seal] ERNEST E. WILLIAMS,
United States Commissioner for the Northern District of California.

[Endorsed]: Filed May 23, 1932. [28]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS MARY W. STEWART, SEARS POINT TOLL-ROAD CO., A CORPORATION, AMERICAN TRUST COMPANY, A CORPORATION, BAY LAND COMPANY, A CORPORATION, FIELD AND TULE LAND COMPANY, A CORPORATION, AND WEST END LAND COMPANY, A CORPORATION, TO THE AMENDED BILL OF COMPLAINT AND TO THE AMENDMENTS THERETO.

Come now defendants Mary W. Stewart, Sears Point Toll-Road Co., a corporation, American Trust Company, a corporation, [29] (sued herein as American Trust Co.), Bay Land Company, a corporation, (sued herein as Bay Land Co.), Field and Tule Land Company, a corporation, (sued herein as Field and Tule Land Co.), and West End Land Company, a corporation, (sued herein as West End Land Co.), and answering complainant's Amended Bill of Complaint on file herein and the Amendments thereto on file herein, (all hereinafter for convenience referred to as the Bill), admit, deny and allege as follows, to wit:

I.

Answering the allegations of Subdivision II of the Bill, these defendants deny that complainant is the owner of, or at any time subsequently to September 28, 1850, ever was the owner of, the lands

or any of the lands described in said Subdivision II of the Bill; deny that complainant has ever occupied said lands or any thereof, either as a part of the Mare Island Navy Yard Reservation, or for public or military or naval purposes, or otherwise or at all; and deny that complainant has ever been in the possession of said lands or any thereof, or that it is, or at any time since September 28, 1850, ever was, entitled to the possession of said lands or any thereof.

Further answering the allegations of said Subdivision II of the Bill, these defendants allege the fact to be that each of them is the owner of a portion of or an interest in the said lands described in the Bill, their respective ownerships and interests being those more particularly set forth in "Exhibit A" attached hereto and by this reference hereby made a part of this Answer; that the lands described in said "Exhibit A" have for more than fifty years last past been in the possession of these defendants and of their respective predecessors in interest (exclusive of complainant); that these defendants and their said predecessors were entitled to the possession of [30] said lands during all of said period; and that said possession of said lands by these defendants and their respective predecessors in interest has at all times been open, notorious, under claim of right and under color of title, and adverse to complainant and to the whole world.

II.

Answering the allegations of Subdivision III of the Bill, these defendants deny that by an instrument dated May 2, 1841, or otherwise, executed by Juan B. Alvarado, Constitutional Governor of the Department of California, or by any other person, a grant was made by the Government of Mexico to Victor Castro of the lands described in the Bill, or of any of said lands, or of any lands at all; deny that any of the lands described in the Bill was ever granted by the Mexican Government to any person whomsoever; deny that "Exhibit A" to the Bill is, and allege that it is not, a copy of the said grant in the Bill alleged, or of any grant made by the Government of Mexico; deny that there was ever any grant made by the Government of Mexico to Victor Castro which was filed for record in the office of the County Recorder of and for Sonoma County, California, either on July 28, 1852, or at any other time, and allege that no such grant was ever made; deny that any grant by the Mexican Government of any of the said lands described in the Bill was ever filed for record in the office of said County Recorder for Sonoma County, California, and allege that no such grant was ever so filed; deny that said Victor Castro ever had any right or title to said above-mentioned lands, or any of them, and allege that he never had any right or title in or to any of said lands; deny that George W. P. Bissell and William H. Aspinwall, or either of them, ever acquired any right or title thereto, from Victor Castro or other-

[31] wise, or that they or either of them ever had any right or title in or to said lands or to any thereof, and allege that neither of them ever had any such right or title; deny that said Bissell and Aspinwall, or either of them, or anyone ever filed in the office of the Board of Land Commissioners empowered to ascertain and settle private land claims in the State of California, either on August 31, 1852, or at any other time, their or any petition seeking the confirmation to them of the lands or any of the lands described in the Bill and allege that no such petition was ever so filed; deny that any proceedings were ever had before said Board of Land Commissioners with respect to said above-mentioned lands, or any of them, or that any decree was ever given or made or entered by said Board confirming to anyone the said lands or any thereof, and allege that no such proceedings were ever had and that no such decree was ever given or made or entered.

Further answering the allegations of said Subdivision III of the Bill and also the allegations of the subsequent subdivisions thereof, these defendants allege the fact to be that none of the lands described in the Bill is now or ever was a part of Mare Island; allege that none of said lands was ever included or involved in, or affected by, any proceedings whatever taken or had for the confirmation of any grant or alleged grant by the Mexican Government to Victor Castro of said Mare Island, or of any other

grant or alleged grant by said Mexican Government.

Further answering the allegations of said Subdivision III of the Bill and also the allegations of the subsequent subdivisions thereof, these defendants allege the fact to be that Victor Castro claimed that Mare Island was granted to him on or about May 20, 1841, by the Government of Mexico, acting through [32] Juan B. Alvarado, Constitutional Governor of the Department of California; that the Mare Island so claimed by said Victor Castro did not include the lands or any of the lands described in the Bill; that in fact no such grant was ever made by said Juan B. Alvarado or by the Mexican Government to said Victor Castro and that the pretended grant under which said Victor Castro claimed was in fact executed by said Alvarado, if executed by him at all, long after the acquisition of California by the United States and was fraudulently antedated May 20, 1841; that said Bissell and Aspinwall, claiming to have succeeded to the rights and title of said Victor Castro to Mare Island under said grant, filed with said Board of Land Commissioners on or about August 31, 1852, a petition against the complainant herein seeking the confirmation to the said Bissell and Aspinwall of said Mare Island; that before any proceedings were had upon said petition and before any evidence was taken thereon and on or about the 4th day of January, 1853, said Bissell and Aspinwall, and one Mary

S. McArthur, sold and conveyed to the complainant herein (i. e., to the defendant in said proceedings before said Board of Land Commissioners) all of their right and title under said grant and in and to said Mare Island; that thereupon complainant herein became the owner and in control of both sides of said proceedings and was and thereafter at all times continued to be the dominus litis upon both sides thereof; that thereafter complainant permitted certain proceedings to be had before said Board and on the 8th day of May, 1855, permitted said Board to make and file a decree in said proceedings purporting to confirm said claim to Mare Island to said Bissell and Aspinwall; that said decree was and is null and void and of no effect. [33]

That thereafter and on the 23rd of October, 1855, complainant caused and permitted to be filed in this Honorable Court a petition for a review of said decision and decree of said Board, not for the purpose of defending or establishing any right, title or interest as against said claimants, Bissell and Aspinwall, but solely for the purpose of obtaining a judgment and decree to be used against third persons, and caused and permitted said matter to be submitted to this Honorable Court; that thereafter, without any hearing by this Honorable Court and without its considering the transcript of the aforesaid proceedings before said Board of Land Commissioners, which had theretofore been filed with this Honorable Court, and without considering or adjudicating the merits of the matter and solely

by reason of the consent of the complainant herein, this Honorable Court made a minute order on March 2, 1857, purporting to be for a decree confirming said decree of said Board; that there were no further steps or proceedings taken in said matter by complainant or by said ostensible claimants (other than an ineffectual appeal to the United States Supreme Court which was dismissed at the direction of the Attorney General of the United States) nor was there ever any decree made or entered therein, either pursuant to said last-mentioned minute order or otherwise, until 73 years thereafter, when, only 7 days before the filing of the Bill herein, and with the bringing of this suit directly in view and for the purpose of adversely affecting the rights of the defendants in this suit (complainant claiming that the lands described in the Bill herein were and are a part of Mare Island) and without giving these defendants or any of them any notice or opportunity to be heard and wholly ex parte, claimant requested and caused this Honorable Court on April 15, 1930, to make and sign a [34] decree nunc pro tunc as of March 2, 1857, purporting to confirm the said decree of said Board of Land Commissioners; that complainant procured said decree nunc pro tunc for the purpose of adversely affecting the rights of the defendants in this suit notwithstanding that, subsequently to the making of said minute order of March 2, 1857, the following proceedings had been had and the following things had occurred:

(a) On or about the 3rd day of January, 1883, an action of ejectment was brought in the Superior Court of the State of California in and for the County of Solano by D. W. Bouldin and A. P. Moore against Thomas S. Phelps, who was then the Commandant of the Mare Island Navy Yard and in possession of Mare Island, to recover the possession of said Mare Island; that thereafter and on the 14th day of January, 1883, said action was removed by said defendant Phelps to the United States Circuit Court, Ninth Judicial Circuit, for the District of California; that the plaintiffs in said action claimed title to said Mare Island under the aforesaid Mexican grant from Juan B. Alvarado to Victor Castro and under mesne conveyances from said Victor Castro, which conveyances were claimed to have been made prior to the alleged conveyance from Victor Castro under which said Bissell and Aspinwall claimed; that defendant Phelps was represented in said action by S. G. Hilborn, the United States District Attorney for the District of California, and, in addition thereto, the Attorney General of the United States appointed Judge A. L. Rhodes as a special assistant attorney of the United States to appear in said case on behalf of complainant [35] and to assist in the defense of said action, and said counsel controlled and conducted the defense of said action; that the only right, title or in-

terest in or to said lands set up by defendant Phelps in defense of said action was the title to the aforesaid lands claimed by complainant herein, said defendant and said counsel expressly disclaiming that said defendant had any other right, title or interest in or to said lands or any part thereof; that said defendant and said counsel asserted and produced evidence showing that said Mexican grant from said Juan B. Alvarado to said Victor Castro of said Mare Island was in fact fraudulent and void and was not made until 1850 and long after the Mexican sovereignty of California had ceased, and that said grant was fraudulently antedated to May 20, 1841; that said cause was tried before Circuit Judge Lorenzo Sawyer and District Judge Ogden Hoffman, who found and held that said Mexican grant of Mare Island was in fact fraudulent and void; that the court's opinion in said cause is reported in full in 30 Fed. 547.

(b) Prior to the 13th day of September, 1883, John Irwin, as commandant of said Mare Island Navy Yard, claimed that the lands described in the Bill were a part of Mare Island and as a result thereof and on said last-mentioned date an action in ejectment was brought in the Superior Court of the State of California in and for the County of Solano by The San Francisco Savings Union, The Bank of California and George A. Nourse, the owners of

said lands and the predecessors in interest of the defendants in [36] this suit, against said John Irwin, for the said lands described in the Bill; that thereafter and on the 6th day of October, 1883, said action was removed by said defendant Irwin to the United States Circuit Court, Ninth Judicial Circuit, for the District of California; that said lands were claimed by the plaintiffs in said action under the Swamp Land Act of September 28, 1850 (9 Stats. 519) as successors in interest to the State of California; that defendant Irwin was represented in said action by said S. G. Hilborn, the United States District Attorney for the District of California, and in addition thereto, the Attorney General of the United States appointed Judge A. L. Rhodes a special assistant attorney of the United States to appear in said case on behalf of the complainant and to assist in the defense of said action, and said counsel in fact conducted the defense of said action; that the only right, title or interest in or to said lands set up by defendant Irwin in defense of said action was the title to the aforesaid lands claimed by complainant herein, said defendant Irwin and said counsel expressly disclaiming that said defendant had any other right, title or interest in or to said lands or any part thereof; that said defendant and said counsel asserted and presented evidence in an attempt

to show that the complainant herein had title to said lands as a part of Mare Island by virtue of being successor in interest of said Victor Castro under the aforesaid Mexican grant of said Mare Island to said Victor Castro and that complainant also had title thereto by virtue of the reservations attempted to be made by the President of the United States referred to in Subdivisions VI and VII of the Bill, said contentions both as to said lands being a part of [37] said Mare Island and included in said grant to Victor Castro and as to said reservations by the President of the United States being in all respects precisely the contentions now made on behalf of the complainant in this suit; that said action was tried before Mr. Justice Field of the United States Supreme Court then sitting on circuit and before District Judge Hoffman and they expressly found and held that said lands were not a part of Mare Island nor were they or any part thereof included within said grant of said Mare Island to said Victor Castro and that none of said lands was affected by the said attempted reservations by the President of the United States mentioned in subdivisions VI and VII of the Bill, and that complainant had no right or title thereto, but that, on the contrary, the title thereto was in the plaintiffs in said action; that the opinion of the court in so holding is reported in full in 28 Fed. 708; that thereafter

the Acting Attorney General of the United States wrote to said Judge Rhodes, special counsel for complainant as aforesaid, and directed him to sue out a writ of error in said action; that pursuant to such direction a writ of error was sued out and the matter brought before the Supreme Court of the United States; that said cause was argued before the Supreme Court of the United States on behalf of the plaintiff in error, the said John Irwin, by Mr. Assistant Attorney General William A. Maury representing the complainant herein; that on the 3rd day of February, 1890, the Supreme Court of the United States affirmed the judgment in favor of said plaintiffs in said action, the Supreme Court's opinion being reported in 136 U. S. 578; that [38] following such affirmance and based thereon complainant thereafter issued patents to the State of California covering all of the lands described in the Bill, all as hereinafter more particularly set forth; that notwithstanding the facts aforesaid and for the purpose of affording a pretended ground for re-litigating the matters which were decided in said action and of adversely affecting the rights of the defendants in this suit, complainant procured the making and entry of said decree nunc pro tunc as aforesaid.

III.

Answering the allegations of Subdivision IV of the Bill, these defendants deny that said Board of

Land Commissioners was vested with or had any power or authority to make the confirmation alleged and set forth in the Bill, either by virtue of the Act of Congress approved March 3, 1851 (9 Stats. 631) or otherwise or at all, but on the contrary allege the fact to be that said Board had no power or authority or jurisdiction in the premises on account of the facts and circumstances set forth in the preceding subdivision of this Answer; admit that said Bissell and Aspinwall, claiming a right to said Mare Island under the aforesaid grant to Victor Castro, presented their said claim to said Board of Land Commissioners, but deny that said Bissell and Aspinwall, or either of them, then had or ever had any right or title to said Mare Island, or any part thereof, derived either directly or indirectly from the Mexican Government or otherwise or at all; allege that prior to the taking or presentation of any evidence before said Board, said Bissell and Aspinwall sold and conveyed all of their right and title to said Mare Island to the complainant herein, all as in the preceding [39] subdivision of this Answer set forth; allege that the evidence presented to and considered by said Board was presented and considered under the circumstances hereinabove set forth and not otherwise; deny that said Board determined the validity of said claim to Mare Island, and allege that the facts in this behalf are as in the preceding subdivision of this Answer set forth and not otherwise; admit that said Board on October 23, 1855, filed a certified tran-

script of said case and of their proceedings and decision with the Clerk of this Honorable Court, but deny that said proceedings, or any of them, or that said decree, was valid, and allege the fact to be that the same were and each of them was null and void and of no effect, all as more particularly set forth in the preceding subdivision of this Answer.

Further answering the allegations of subdivision IV of the Bill, these defendants deny that pursuant to the terms of Sections 9 and 10 of the aforesaid Act of March 3, 1851 (9 Stats. 631), or otherwise, complainant herein, either by its District Attorney or otherwise, duly presented its petition to this Honorable Court praying a review of said decision and decree of said Board, or for a decision upon the validity of said claim to Mare Island, or that complainant herein, duly or otherwise, complied with the law or the requirements governing such petitions for review, but on the contrary allege the true facts to be as stated in the preceding subdivision of this Answer and not otherwise; deny that the aforesaid minute order of this Court of March 2, 1857, purporting to be for a decree confirming said decree of said Board was duly given or made, but on the contrary allege the fact to be that said minute order was made solely by reason of the facts and circumstances hereinbefore alleged, and allege that said minute order was and is null and void and not [40] binding upon these defendants, or any of them; deny that the aforesaid decree nunc

pro tunc was duly given or made, but on the contrary allege the fact to be that said decree was made solely by reason of the facts and circumstances hereinbefore alleged and allege that said decree was and is null and void and not binding upon these defendants, or any of them.

Further answering the allegations of Subdivision IV of the Bill these defendants admit and allege that these defendants claim, and each of them claims, under and as a successor to the complainant herein by virtue of a grant made by complainant to the State of California on September 28, 1850, of all of the lands described in the Bill, said lands then being swamp and overflowed lands within the State of California, all pursuant to the Act of September 28, 1850 (9 Stats. 519), all of said last-mentioned lands being within and subject to the provisions of said grant; allege that each of these defendants claims an interest in said lands as more particularly set forth in "Exhibit A" to this Answer; deny that these defendants, or any of them, or any of their predecessors in interest, are or were in privity with complainant herein in said appeal from said decision of said Board of Land Commissioners, but on the contrary allege the fact to be that complainant herein had no right or power or authority whatever to represent these defendants, or any of them, or any of their predecessors in interest (other than complainant itself) in said proceedings; deny that these defendants are, or that any of them is, bound by said nunc pro tunc decree,

but on the contrary allege the fact to be that none of these defendants is bound thereby; deny that any of the proceedings aforesaid in any way related to or included or involved or affected any of the lands described in the Bill and allege the fact to be that none of said proceedings in any [41] way related to or included or involved or affected any of said lands.

IV.

Answering the allegations of subdivision IV(a) of the Bill, as added by amendment thereto, these defendants deny that in July, 1877, the Surveyor General of California in compliance with the thirteenth section of the act entitled "An Act to ascertain and settle the private Land Claims in the State of California", approved March 3, .851, caused said private land claim for Mare Island to be surveyed and a plat to be made thereof, and in this connection allege the facts to be that in July, 1877, purporting to act pursuant to the provisions of an act entitled "An Act to expedite the settlement of titles to lands in the State of California" approved July 1, 1864 (13 Stats. 332), the United States Surveyor General of California appointed United States Deputy Surveyor James E. Freeman as special deputy to survey the claim for Mare Island although no final decree of confirmation had been made or entered; that pursuant to such appointment said James E. Freeman made what purported to be survey and plat of said Mare Island which were filed in the office of said Surveyor General of California in or about

the month of August, 1877; admit that said Surveyor General of California thereupon gave notice that the same had been done by publication once a week for four consecutive weeks in two newspapers, one published in the City of San Francisco, to wit, the "Alta California", and one published near the land surveyed, to wit, the "Vallejo Evening Chronicle" published in the City of Vallejo, County of Solano, State of California, and allege the fact to be that the date of first publication in San Francisco was October 11, 1877; admit that said Surveyor General of California retained in his office for public inspection the [42] said survey and said plat until ninety days from the date the first publication in San Francisco had expired; deny that no objections were made to said survey and allege the fact to be that on the 14th day of July, 1879, a protest against said survey and said plat of Mare Island was filed in the office of said Surveyor General of California by Bernard T. Hanley, Esq., as attorney for owners; deny that said Surveyor General of California approved said survey and said plat or either of them and allege the fact to be that said Surveyor General of California expressly disapproved of the same because they improperly included a large quantity of land which was not a part of said Mare Island, the said lands so erroneously included being for the most part the very lands which are the subject of this litigation, said Surveyor General of California disapproving the inclusion of any of the lands involved in this

litigation as a part of said Mare Island; deny that copies of said survey and said plat were, or that a copy of either of them was, forwarded by said Surveyor General of California to the Commissioner of the General Land Office at Washington for his examination and approval at the expiration of said ninety days after the aforesaid date of first publication in San Francisco and allege the fact to be that at no time prior to August 7, 1879, was any copy of said plat or of said survey forwarded to said Commissioner of the General Land Office for his examination and approval; deny that thereafter the Commissioner of the General Land Office approved said survey or said plat but allege the fact to be that said Commissioner of the General Land Office has never approved said survey or said plat; allege that these defendants are without knowledge as to whether said Commissioner of the General Land Office caused the said survey or said plat to be filed in a jacket called the Mare Island Jacket in [43] the files of military reservations in the General Land Office; deny that thereafter and on September 22, 1905, or at any other time, the Commissioner of the General Land Office expressly or otherwise approved or used or acted upon said purported survey or said purported plat, and allege the fact to be that at no time has said Commissioner of the General Land Office ever expressly or otherwise approved or used or acted upon the said survey and the said plat, or either of them; deny that thereafter and on September 28, 1905, or at any other

time the Secretary of the Interior expressly or otherwise approved or concurred in any action of the Commissioner of the General Land Office in approving said survey or said plat or in using or acting upon the same, or that said Secretary of the Interior ever approved or used or acted upon said survey or said plat and allege the fact to be that the Secretary of the Interior has never approved said survey or said plat or used or acted upon them, or either of them; admit that some of the lands described in the Bill were erroneously included within the exterior limits of said survey, but deny that all of said lands were so included and allege the fact to be that a very large portion of the lands described in the Bill was never included within the exterior limits of said survey and allege the fact to be that such of said lands as were included within the exterior limits of said survey were erroneously included therein and that, because of said erroneous inclusion, said survey was never approved either by the United States Surveyor General of the State of California or by the Commissioner of the General Land Office or by the Secretary of the Interior, but was expressly disapproved by said United States Surveyor General; deny that any of the said lands described in the Bill was or is included within the [44] exterior limits of said pretended Spanish grant of Mare Island, and allege the fact to be that none of said lands was included within said grant,

V.

Answering the allegations of Subdivision V of the Bill, these defendants admit and allege that complainant acquired such title and interest in said Mare Island and in the lands described in the Bill as said Bissell and Aspinwall and as said Mary S. McArthur had, but deny that they, or any of them, ever had any title to or interest in said Mare Island, or in or to said lands described in the Bill, or in or to any part thereof; admit that complainant paid a valuable consideration to said Bissell and Aspinwall and McArthur of $83,491; admit that complainant received a deed purporting to convey said Mare Island and some of the lands described in the Bill from said Bissell and Aspinwall and McArthur on January 4, 1853, but allege that said deed conveyed no right or title or interest whatever in or to said lands, or any thereof, to complainant; admit that said deed was filed for record and recorded in the County Recorder's office of Solano County, California, on April 18, 1853, but deny that all of the lands described in the Bill now are or ever were situate in said County of Solano, State of California, but on the contrary allege the fact to be that a considerable portion of Sections 31, 32 and 33 of Township 4 North, Range 4 West, and of Sections 34, 35 and 36 of Township 4 North, Range 5 West, M. D. B. and M. are now and ever since a long time prior to January 1, 1853, have been situate in the County of Napa, State of California.

VI.

Answering the allegations of Subdivision VI of the Bill, these defendants admit that on November 6, 1850, the [45] President of the United States by executive order reserved from sale and for public purposes Mare Island; deny that said Mare Island so reserved ever included, or now includes, the lands described in the Bill, or any of said lands, and allege the fact to be that none of the said lands was ever reserved by the President of the United States, either by executive order or otherwise, for public or any other purposes or at all, and further allege the fact to be that none of said lands has at any time subsequently to September 28, 1850, been public land of the United States or subject to reservation by the United States, but that on the contrary, all of said lands were upon said last-mentioned date granted by the United States to the State of California and have ever since been owned by the State of California and its subsequent grantees.

VII.

Answering the allegations of Subdivision VII of the Bill, these defendants admit that on February 9, 1853, the Secretary of the Navy of the United States of America, acting under and in pursuance of Section 3 of the Act of August 3, 1852 (10 Stats. 104) selected the tract of land in the Bay of San Francisco bounded by the Bay of San Pablo, the Straits of Carquinez, and Napa Creek, known as

President of the United States that the said lands Mare Island, together with all its appendages of tule or marsh land ordinarily reputed to belong to said Island, and the harbors, waters and anchorages connected therein and necessary to the use of the same, as a site for the Navy Yard and Naval Depot provided for by said Act of Congress, but deny that within said lands are included the lands and premises, or any of the lands or premises, described in the Bill, and allege the fact to be that none of the lands described in the Bill was within the lands so selected [46] by said Secretary of the Navy.

Further answering the allegations of Subdivision VII of the Bill, these defendants admit that following the aforesaid selection, the Secretary of the Navy on February 9, 1853, recommended to the and premises selected by him as above stated be reserved for public uses and that on February 11, 1853, President Millard Fillmore approved said recommendation and made said reservation and that said reservation was communicated to the Secretary of the Interior and duly and properly recorded, but allege the fact to be that none of the lands described in the Bill was included within the lands so reserved.

Further answering the allegations of Subdivision VII of the Bill, these defendants admit that a copy of the aforesaid selection and recommendations of the Secretary of the Navy, together with the approval of the President of the United States, and his order making said reservation, is attached to

the Bill, and marked "Exhibit C", but allege the fact to be that said copy is incomplete in that said copy does not include the map or chart referred to therein; admit that from time to time the Congress of the United States has approved, ratified and confirmed said reservation of Mare Island and by various statutes has appropriated large sums to improve the lands comprised therein and authorized their improvement, but, as aforesaid, allege the fact to be that none of the land described in the Bill was or is included within the lands so reserved.

VIII.

Answering the allegations of Subdivision VIII of the Bill, these defendants deny that the lands and premises, [47] or any of the lands or premises, described in the Bill is or are included within the boundaries, or is or are a part of the lands or premises described in the grant from Juan B. Alvarado, Governor of California under the rule and occupation of Mexico, to Victor Castro, or that said lands or premises, or any thereof, were or was conveyed by said Juan B. Alvarado to said Victor Castro, but on the contrary allege the fact to be, as aforesaid, that said grant was fraudulent and void, and that no grant of any lands was ever made by said Juan B. Alvarado to said Victor Castro; deny that any confirmation of said grant was ever made by said Board of Land Commissioners to George W. P. Bissell and William H. Aspinwall, or to either of them, or otherwise or at all; deny

that said lands and premises, or any thereof, are or is included within the boundaries of, or are or is a part of the lands and premises purchased by the United States from said Bissell and Aspinwall and their co-grantor, Mary S. McArthur, or from any of them, and in this connection allege the facts to be as hereinabove in this Answer set forth.

IX.

Answering the allegations of Subdivision IX of the Bill, as amended, these defendants deny that continuously since September 16, 1852, and up to and including the year 1880, or at any other time, or at all, complainant occupied the lands, or any of the lands, described in the Bill, by or through its Navy Department and officials or otherwise, or that complainant has used or improved the same, or any thereof, for military purposes in connection with the Naval Station, Navy Yard and premises of the United States on Mare Island, or otherwise or at all. [48]

Further answering said Subdivision IX of the Bill, as amended, these defendants allege the fact to be that complainant has at no time since September 28, 1850, had possession of or been entitled to possession of the said lands described in the Bill, or any thereof; deny that the alleged possession of complainant during the period from September 16, 1852, to and including the year 1880, was at all times or ever actual or open or adverse or exclusive or under claim of right or under title or under

claim or color of title, either that supplied by the aforesaid reservations or by the said deed of January 4, 1853, or by the said decision of the Board of Land Commissioners of May 8, 1855, or by said minute order of this Honorable Court given and made on March 2, 1857, or by said decree of this Honorable Court of April 15, 1930, by relation, or otherwise, or at all; admit that the lands of Mare Island, but deny that any of the lands described in the Bill, were, during the aforesaid period, improved for military and naval purposes by the construction of buildings and improvements thereon, and of signs warning trespassers that said premises were government property; deny that there was about the year 1873 or at any other time located upon the lands described in the Bill a dwelling house erected or maintained or occupied by or on behalf of complainant; deny that a road has ever been built thereon or has ever been used under the authority of complainant; deny that complainant has ever used the lands in question for gun range or for target practice; deny that complainant from time to time excavated or dug in said lands or used them for sand or gravel pits or as a source of supply for said sand or gravel either as complainant required for its use in connection with its use and occupancy of said Naval Reservation or otherwise or at all, and allege the fact to be that if [49] any of said things had been done by complainant, complainant was thereby a trespasser upon lands which did not belong to it but belonged to these defen-

dants and to their predecessors in interest; deny that all of the lands described in the Bill, or that any of them, were or was used by complainant in connection with the operations or activities of its naval or military forces or otherwise; allege that these defendants are without knowledge as to any of the following matters alleged in said Subdivision IX of the Bill, as amended—"In November, 1873, plaintiff went upon said land described in paragraph II and posted at frequent intervals thereon signs and notices that said property was Government property, and warning trespassers to keep off thereof", and allege the fact to be that if said things were done by complainant, as so alleged, complainant was thereby a trespasser upon lands which did not belong to it, but belonged to these defendants and to their predecessors in interest.

Further answering the allegations of said Subdivision IX of the Bill as amended, these defendants admit that on the 8th day of July, 1886, or thereabouts, the Circuit Court of the United States for the District of California in an action of ejectment therein pending and numbered 3140 in the records and files of said Court, in which plaintiff was not a party, and in which San Francisco Savings Union, a corporation, and others, were plaintiffs, and John Irwin, then Commandant of complainant's navy yard aforesaid, was defendant, gave and made a judgment in favor of said plaintiffs and against said defendant for the recovery by said plaintiffs from said defendant of the possession of said lands

in the Bill described, and in this connec- [50] tion allege that the facts with respect to said action are as hereinabove in Subdivision II of this Answer set forth and not otherwise; deny that complainant herein was not represented in said action, but on the contrary allege the fact to be that complainant herein was represented in said proceedings by its own counsel especially employed for that purpose and for the purpose of seeking to aid in the defense of said action, as in Subdivision II of this Answer alleged; admit that these defendants and their predecessors have entered upon and occupied that portion of said lands which is owned by them and described in "Exhibit A" to this Answer, but deny that said occupancy was or is in consequence of said judgment, and in this connection allege the fact to be that these defendants and their predecessors were in possession and occupation of said lands long prior to said judgment and that they continued in the possession and occupancy of said lands thereafter and continuously up to the present time; admit that these defendants have withheld possession of said lands from complainant, without complainant's consent, and in this connection allege, as aforesaid, that complainant is not and never has been since September 28, 1850, entitled to the possession of said lands or any thereof; deny that these defendants have no other entry or right of entry or possession of said lands, except after said judgment, but allege the fact to be that defendants and their predecessors (exclusive of complainant) have

had entry and right of entry and right of possession of and to all of said lands ever since September 28, 1850. [51]

X.

Answering the allegations of Subdivision X of the Bill, these defendants admit and allege that the lands described in the Bill were claimed by the State of California under and by virtue of the Act of September 28, 1850 (9 Stats. 519) commonly known as the "Swamp Land Act", by which the whole of those swamp and overflowed lands within the State of California made unfit thereby for cultivation, comprising part of the public domain of the United States of America on the date of passage of said Act and remaining unsold, were granted to the State of California; allege that said lands and all of said lands described in the Bill were of the character described in the aforesaid Act of September 28, 1850, and were at the date of said Act part of the public domain and unsold and by said Act passed to the State of California; admit and allege that said lands were surveyed in the year 1869 under the authority of the State of California and identified by said survey as Survey No. 569 and as containing 7413.48 acres in area, and that thereafter the State of California issued its patent conveying all of the lands included in said survey to George W. Pearson under date of April 7, 1874, and describing them according to said Survey No. 569.

XI.

Answering the allegations of Subdivision XI of the Bill, these defendants admit that they and each of them claim a right, title or interest in or to said lands described in the Bill, through and by virtue of mesne conveyances vesting in them the title of said George W. Pearson or some part or parcel thereof, and in this behalf allege that each of [52] these defendants claims the right, title or interest in and to said lands more particularly set forth in "Exhibit A" attached hereto; admit that these defendants claim, and each of them claims, such right, title or interest adversely to the complainant; deny that any of said claims is without right or foundation in law or in fact, but on the contrary allege the fact to be that each of said claims is of right and is founded both upon law and fact; allege that these defendants are without knowledge as to any of the following matters alleged in said Subdivision XI of the Bill—"That there are other persons to complainant unknown claiming some right, title, estate, lien or interest in the real property described in paragraph II of this complaint, adverse to the complainant's ownership, and casting a cloud upon the complainant's title therein; that the claims of said persons are wholly without rights or merit in law or in fact".

XII.

Answering the allegations of Subdivision XII of the Bill, these defendants admit that on April 26, 1924, a patent numbered 937055 was issued to the

State of California by the United States under the provisions of said Act of September 28, 1850, known as the Swamp Land Act, which said patent included all of the lands described in subparagraph (B) of Subdivision II of the Bill which lie in Townships 3 and 4 North, Range 4 West, M. D. B. and M.; admit and allege that on June 5, 1896, a patent known as Swamp Land Patent No. 72 was issued to the State of California by the United States under the provisions of said Swamp Land Act, which said patent included all of fractional Section 1 of Township [53] 3 North, Range 5 West, M. D. B. and M., containing an estimated area of 177 acres described in subparagraph (B) of Subdivision II of the Bill; and admit and allege that on February 7, 1910, a patent known as Swamp Land Patent No. 152 was issued to the State of California by the United States under the provisions of said Swamp Land Act, which said patent includes all of the lands described in subparagraph (B) of Subdivision II of the Bill lying in Township 4 North, Range 5 West, M. D. B. and M.

Further answering the allegations of said Subdivision XII of the Bill, these defendants allege that each of the said patents is, and ever since the date of its issuance has been, in all respects valid and in full force and effect, and deny that said patents then were or now are, or that any of said patents then was or now is, either void, or of no force or effect, or of no validity, in so far as the same grant or convey or include or describe the lands, or any

of the lands mentioned in the Bill, either for the reasons set forth in said Subdivision XII of the Bill, or otherwise or at all; deny that said lands described in said patents ever were, or that any of said lands ever was, held in private ownership under or by virtue of the aforesaid grant from Mexico to said Victor Castro, either at the time of the passage and approval of said Swamp Land Act, or at any other time or at all; deny that said lands were not then a part of the public domain, but on the contrary allege that at the date of said Swamp Land Grant all of said lands described in the Bill were part of the public domain of the United States; deny that complainant has owned or occupied any of said lands at any time other than as a part of the public domain, and deny that [54] complainant has ever owned or occupied said lands, or any of them, as the successor in interest to said Victor Castro under said grant from the Government of Mexico; deny that any of said lands has ever been selected for or devoted to the public purposes of the United States and deny that any of said lands has ever been withdrawn from entry by private persons as alleged in Subdivisions VI and VII of the Bill, or otherwise (except as a result of the grant of said lands to the State of California under said Swamp Land Act, as aforesaid) either prior to the issuance of the aforesaid patents, or at any other time or at all.

XIII.

Answering the allegations of Subdivision XIII of the Bill, these defendants allege that they have no knowledge of any of the matters or things in said Subdivision alleged.

XIV.

Answering the allegations of Subdivision XIV of the Bill, these defendants deny that complainant is without adequate remedy in the premises at law, and deny that complainant is entitled to any remedy whatsoever in the premises.

As a second, separate and distinct defense in answer to the Bill, these defendants allege that this suit and the cause of action attempted to be stated in the Bill are, as to said Swamp Land Patent No. 72 dated June 5, 1896, from the United States of America to the State of California, referred to in Subdivision XII of the Bill, and as to all of the lands described in Subdivision II of the Bill lying in Township 3 North, Range 5 West, Mount Diablo Base and Meridian, and as to said Swamp Land Patent No. 152 dated February 7, [55] 1910, from the United States of America to the State of California, referred to in said Subdivision XII of the Bill, and as to all of the lands described in Subdivision II of the Bill lying in Township 4 North, Range 5 West, Mount Diablo Base and Meridian, forever barred by Section 8 of the Act of Congress, approved March 3, 1891, Chapter 561 (26 Stats. at p. 1099), and by Title 43, United States Code, Section 1166.

Wherefore, these defendants pray judgment as follows:

1. That complainant is not the owner of any of the real property described in "Exhibit A" attached to this Answer, or to any part thereof, and that complainant has no right or title or interest in or to said real property, or any part thereof.

2. That each of these defendants is the owner of the interest in said real property described in said "Exhibit A" set forth therein, and that each of said defendants is in and entitled to possession of such interest.

3. That the complainant be perpetually enjoined from asserting any claim or title whatsoever in or to said real property, or any thereof, adverse to these defendants.

4. That these defendants have such further or different relief as may be agreeable to equity and good conscience.

5. That these defendants have and recover their costs of suit herein incurred.

HENRY E. MONROE,
WARREN OLNEY, JR.,
J. M. MANNON, JR.,
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
WARREN OLNEY, III,
Solicitors for Answering Defendants.
McCUTCHEN, OLNEY, MANNON & GREENE,
Of counsel. [56]

EXHIBIT A

[Printer's Note]: Here follows description of various parcels of lands with statement of ownership substantially as they appear in Exhibit "A" to the Judgment. [57]

[Endorsed]: Service of the within Answer and receipt of a copy thereof admitted this 14th day of February, 1936.

H. H. McPIKE,
U. S. Atty.
ESTHER B. PHILLIPS,
Asst. U. S. Atty.
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 14, 1936. [71]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF DEFENDANTS MARY W. STEWART, SEARS POINT TOLL-ROAD CO., A CORPORATION, AMERICAN TRUST COMPANY, A CORPORATION, BAY LAND COMPANY, A CORPORATION, FIELD AND TULE LAN DCOMPANY, A CORPORATION, AND WEST END LAND COMPANY, A CORPORATION, TO THE AMENDED BILL OF COMPLAINT AND TO THE AMENDMENTS THERETO.

Come now defendants Mary W. Stewart, Sears Point Toll-Road [72] Co., a corporation, American

Trust Company, a corporation, (sued herein as American Trust Co.), Bay Land Company, a corporation (sued herein as Bay Land Co.), Field and Tule Land Company, a corporation (sued herein as Field and Tule Land Co.), and West End Land Company, a corporation (sued herein as West End Land Co.), and, with leave of court first had and obtained, file the following amendment to their answer to complainant's amended bill of complaint on file herein and the Amendments thereto on file herein (all hereinafter for convenience referred to as the Bill), and admit, deny and allege as follows, to-wit:

THIRD DEFENSE

The Established Public Boundary of the Mare Island Navy Yard Reservation.

As a third, separate and distinct defense and answer to the Bill, these defendants allege as follows:

I.

That the Mare Island Navy Yard Reservation (hereinafter for convenience referred to as said Mare Island Reservation) is a naval reservation of the United States, and the territory thereof is territory of the United States subject to the exclusive jurisdiction, dominion and sovereignty of the United States and not to the jurisdiction, dominion or sovereignty of the State of California. That such exclusive jurisdiction, dominion and sovereignty were acquired by the United States as follows:

On November 6, 1850, and again on February 16, 1853, the President of the United States, by executive order, reserved Mare Island from sale and for public use as a navy yard [73] and naval depot. In addition, in 1853 the United States purchased the claims of certain private persons to said Mare Island and this purchase was consented to by the State of California by acts of her Legislature adopted April 27, 1852 (Cal. Stats. 1852, p. 149) and May 11, 1854 (Cal. Stats. 1854, p. 161). By the act of the Legislature of the State of California of March 2, 1897 (Cal. Stats. 1897, p. 51) the State of California expressly ceded exclusive jurisdiction to the United States of all lands within said State held, occupied or reserved by the United States for military purposes or defense, which cession included the lands then occupied by the United States as said Mare Island Reservation, said act requiring that a sufficient description of such lands be filed in the proper office of record in the counties in which the same were situated, and the United States, pursuant to said act, filed and recorded in the office of the County Recorder of the County of Solano (that being the county within the exterior boundaries of which said Mare Island Reservation is situate) a sufficient description of said Mare Island Reservation, said filing being a map showing the boundaries of said Mare Island Reservation, which map was recorded November 10, 1913, in Book 5 of Maps, page 4, Solano County Records.

II.

That the lands described in Subdivision II of the Bill are the lands embraced within that certain state segregation survey known as Swamp and Overflowed Land Survey No. 569 (hereinafter for convenience referred to as Survey 569).

That beginning in the year 1890 and consistently ever since (except for the filing of this action on April 22, 1930) the United States has recognized that the northwesterly [74] boundary of said Mare Island Reservation did not extend beyond or to the north of the southeasterly boundary of said Survey 569. Said southeasterly boundary of said Survey 569 has been established, recognized and acquiesced in by the United States as the line beyond which said Mare Island Reservation did not extend, and at no time since 1890 has the United States asserted or attempted to assert or exercise jurisdiction, dominion or sovereignty over any of the lands within said Survey 569 as a part of said Mare Island Reservation. On the contrary, ever since 1890 the State of California has, with the knowledge of and without objection by the United States, consistently asserted and exercised its jurisdiction over all of said lands as lands subject to its jurisdiction, dominion and sovereignty and as lands which were not within or a part of said Mare Island Reservation.

That said southeasterly boundary line of said Survey 569 became the established, recognized and accepted public boundary line limiting the extent of said Mare Island Reservation in the manner next hereinafter set forth.

III.

Mare Island is now and at all times has been a body of high land rising out of the waters of San Pablo Bay, being surrounded, except at its extreme northwesterly end, by the waters of said Bay and of Carquinez and Mare Island Straits. Said Island extends lengthwise in a northwesterly and southeasterly direction a total distance of about 2½ miles. At its northwesterly end it was long prior and long subsequently to 1850 connected by a narrow neck of marsh, in places less than 600 feet wide, with a great area of swamp and overflowed lands [75] extending to the north and west seven or eight miles. Prior to 1850 and for many years thereafter said narrow neck of marsh was submerged and completely covered with water at least at times of extreme high tide. The said great area of swamp and overflowed lands to the north and west was also, at extreme high tide, largely covered with water, and except for a sand ridge along the shore of San Pablo Bay washed up by the waters of said Bay, was swampy and marshy and in good part subject to overflow and was entirely unfit for cultivation or use of any kind without reclamation.

That most of said swamp and overflowed lands to the north and west lay within the boundaries of said Survey 569, which was surveyed on behalf of the State of California in June of 1869. The swamp and overflowed lands lying between and southeasterly boundary of said Survey 569 and said Mare Island, including said narrow neck of marsh, were

embraced within that certain state segregation survey known as Swamp and Overflowed Land Survey No. 34, which survey is hereinafter for convenience referred to as Survey 34.

IV.

That in the year 1853 the United States took possession of Mare Island and commenced the establishment of a navy yard and navy depot thereon and has ever since occupied said Island as a reservation for naval purposes, with the consent of the State of California as hereinbefore set forth, and has exercised exclusive jurisdiction, dominion and authority over said Island and said naval reservation. [76]

V.

That on September 28, 1850, the United States, by Act of Congress known as the Swamp Land Act, granted to the State of California all unsold swamp and overflowed lands unfit for cultivation lying within said State. All of the lands within said Survey 569 were lands of the character described in said Swamp Land Act and, pursuant to said Act, passed to the State of California by said grant.

On or about the 7th day of April, 1874, the State of California having theretofore and in the year 1869 sold the lands in Survey 569 to one Jacob C. Hinckley, issued its patents for said lands to one John W. Pearson as assignee of said Hinckley, from whom these defendants acquired by mesne conveyances those portions of said Survey 569

owned by them and more particularly described in "Exhibit A" to the Answer of these defendants.

VI.

When the United States first took possession of said Mare Island as a naval reservation as aforesaid, it did not occupy any of the lands within said Survey 34 nor any of the lands within said Survey 569, although almost from the outset it used nearby portions of Survey 34 as a dumping area and also as a place from which it procured sand for use at said Navy Yard and on a few occasions placed targets on said Survey 34 for use in target practice. The United States has never at any time used any [77] portion of the lands lying within said Survey 569 for any purpose whatsoever in connection with said Mare Island Reservation.

Prior to September 13, 1883, one John Irwin, as the then commandant of Mare Island Navy Yard, claimed and asserted the right to possession of said Survey 569 on behalf of the United States and excluded therefrom the predecessors in interest of these defendants. On September 13, 1883, said predecessors in interest of these defendants brought an action in ejectment against said John Irwin for the recovery of said Survey 569, all as more particularly set forth in subparagraph (a) of Subdivision II of the first defense in the Answer of these defendants. As stated in subparagraph (a), said action was defended at the expense and on behalf of the

United States and upon the ground that the lands of which said commandant had taken possession were a part of Mare Island and were owned by the United States as a part of said Mare Island Reservation. On July 8, 1886, the United States Circuit Court, Ninth Judicial District for the District of California, gave judgment in said action in favor of the plaintiffs therein and against said commandant, expressly finding and holding that the lands embraced in said Survey 569 were not a part of Mare Island and were not owned by the United States as a part of said Mare Island Reservation or otherwise, but, on the contrary, the plaintiffs in said action were the owners thereof as the successors in interest of the State of California under said Swamp Land Grant. The defendant in said action, at the expense and on behalf of the United States, prosecuted an appeal from said judgment to the Supreme Court of the United States, and on February 3, 1890, said judgment was affirmed by said court. Upon the affirmance of said judgment the plaintiffs in said action went into [78] possession of said land and from and after that time until the commencement of this action said judgment was and has been accepted by the United States, and by the State of California, and by all persons interested therein as conclusively establishing that all of the lands in said Survey 569 were not a part of Mare Island and were not owned by the United States.

Since the affirmance of said judgment the southeasterly boundary line of said Survey 569 has consistently been recognized by the United States as the public boundary line between said Mare Island Reservation and the territory subject to the jurisdiction, dominion and sovereignty of the State of California, and the State of California has ever since the affirmance of said judgment consistently exercised jurisdiction, dominion and sovereignty over all of the lands lying to the north and west of said boundary line, including all of the lands embraced in said Survey 569, all as evidenced by the following acts among others:

(a) The State of California has consistently taxed the real and personal property in said Survey 569; has included the lands therein in election districts and voting precincts; has exercised through its courts civil and criminal jurisdiction within said Survey 569; and has, through its subordinate instrumentalities, granted franchises for toll roads across said lands. In addition thereto, the predecessors in interest of these defendants have reclaimed large portions of the lands within said Survey 569, and for more than thirty years prior to the filing of this action have been in the undisturbed possession and occupancy of said lands and have cultivated and lived on the same.

The United States, on the other hand, has not attempted [79] to take possession of any of the lands to the north and west of said boundary line,

either as a part of said Mare Island Reservation or otherwise, nor has it attempted to exercise jurisdiction, dominion and sovereignty over any of said lands, as it has consistently done with respect to the lands within said Mare Island Reservation, but has permitted, without objection, the reclamation and cultivation of the lands to the north and west of said line by these defendants and their predecessors in interest and the making of improvements thereon and the construction and use of toll roads, pipe lines and electric power lines across the same.

(b) In the year 1897 the then commandant of Mare Island Navy Yard and the then predecessors in interest of these defendants jointly caused a survey to be made for the purpose of determining the location of the southeasterly boundary line of said Survey 569 as the public boundary line beyond which the said Mare Island Reservation did not extend, and upon the determination of such boundary line the then predecessors in interest of these defendants, to the knowledge and without objection by the United States, constructed a levee on said line, as so determined, for the purpose of reclaiming the land to the north thereof. Subsequently it was discovered that the boundary line as so determined was erroneous and that the true southeasterly boundary line of said Survey 569 lay to the northwest of said line as theretofore established; whereupon, said boundary line was correctly located and thereafter and in December, 1914, the United States, with the

acquiescence of the predecessors in interest of these defendants, erected and has ever since maintained a substantial post and wire fence along the true southeasterly boundary line of said Survey 569 as a boundary fence marking [80] and indicating the line beyond which said Mare Island Reservation did not extend.

(c) That as hereinbefore stated, on November 10, 1913, pursuant to said act of the Legislature of the State of California of 1897 ceding to the United States the exclusive jurisdiction over all lands within the State of California held, occupied or reserved by the United States for military purposes or defense, the United States filed and recorded in the office of the County Recorder of the County of Solano a map showing the boundaries of said Mare Island Reservation and upon said map the northwesterly boundary line of said Reservation is shown as the southeasterly boundary line of said Survey 569, as correctly located as in paragraph (b) heretofore stated.

(d) On June 5, 1896, the United States patented to the State of California all those portions of said Survey 569 lying in Township 3 North, Range 5 West, M. D. B. & M., and on February 7, 1910, the United States patented to the State of California all those portions of Survey 569 lying in Township 4 North, Range 5 West, M. D. B. & M., said patents being the patents referred to in the Bill herein as Swamp Land Patents Nos. 72 and 152 respectively.

The lands so patented are the portions of said Survey 569 most remote from said Mare Island, the nearest point of the same being approximately five miles from Mare Island.

Thereafter application was made for the issuance of a patent to the State of California of the lands embraced within said Survey 569 lying between the lands patented as above set forth and the southeasterly boundary line of said Survey 569, said lands being those lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. The Navy Department having [81] theretofore indicated that the United States claimed said lands as a part of said Mare Island Reservation, the Secretary of the Interior under date of October 18, 1912, addressed a letter to the Secretary of the Navy requesting of him such data as might be in the latter's possession relative to the limits of the lands embraced in Mare Island to the end that the matter of segregating the swamp and overflowed lands from said Mare Island might be considered. Under date of February 1, 1913, the Acting Secretary of the Navy addressed a reply to the Secretary of the Interior calling the latter's attention to the judgment in the action of ejectment against John Irwin hereinbefore mentioned, which held that the lands embraced within said Survey 569 were not a part of Mare Island and with said letter said Acting Secretary of the Navy forwarded to the Secretary of the Interior a plan showing the then limits of said Mare Island and

showing that the northwesterly boundary line of said Mare Island Reservation did not extend beyond or to the north or west of said southeasterly boundary line of said Survey 569.

Thereafter the Department of the Interior directed that appropriate surveys be made of said Townships 3 and 4 North, Range 4 West, M. D. B. & M., for the purpose of segregating the swamp and overflowed lands therein granted to the State of California by said Swamp Land Act and directed that such survey should be limited to the lands in said townships lying to the north and west of said southeasterly boundary line of said Survey 569 as established by the fence erected upon said boundary line by the United States as hereinbefore set forth. Such surveys were made and approved, and the Secretary of the Navy having expressed the view in a letter to [82] the Secretary of the Interior, under date of June 4, 1923, that all of the lands lying within said Survey 569 had been lost to the United States by reason of the judgment in said ejectment suit against John Irwin hereinbefore referred to, the Department of the Interior ordered all of the lands embraced within said Survey 569 lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. to be patented to the State of California, and pursuant to said instructions said lands were pat-

ented to the State of California by patent dated April 26, 1924, and numbered 937055.

HENRY E. MONROE,
WARREN OLNEY, JR.,
J. M. MANNON, JR.,
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
WARREN OLNEY, III.
Solicitors for answering defendants.

McCUTCHEN, OLNEY,
MANNON & GREENE,
Of counsel.

[Endorsed]: Filed May 25, 1937. [83]

[Title of District Court and Cause.]

SECOND AMENDMENT TO ANSWER OF DEFENDANTS MARY W. STEWART, SEARS POINT TOLL-ROAD CO., A CORPORATION, AMERICAN TRUST COMPANY, A CORPORATION, BAY LAND COMPANY, A CORPORATION, FIELD AND TULE LAND COMPANY, A CORPORATION, AND WEST END LAND COMPANY, A CORPORATION, TO THE AMENDED BILL OF COMPLAINT AND TO THE AMENDMENTS THERETO.

Come now the defendants above named and with leave of Court first had and obtained file the follow-

ing amendment to their answer to complainant's amended Bill of Complaint and the amendments thereto, all hereinafter for convenience referred to as the Bill, and admit, deny and allege as follows, to-wit:

FOURTH DEFENSE

Equitable Estoppel.

For a fourth, separate and distinct defense and answer to the Bill these defendants allege as follows:

I.

Mare Island, referred to in the Bill herein, is and at all times has been a body of high land rising out of the waters of San Pablo Bay and surrounded, except at its extreme northwesterly end, by the waters of said Bay and of Carquinez and Mare Island Straits. It extends lengthwise in a northwesterly and [84] southeasterly direction a total distance of about two and one-half miles and contains some 900 acres, more or less. In 1850 and prior thereto and for many years thereafter it was connected by a narrow neck of marsh less than 600 feet wide with a great area of swamp and overflowed lands extending to the north and west seven or eight miles and containing some 7,000 acres, more or less. In 1850 and prior thereto and for many years thereafter said narrow neck of marsh land was submerged and completely covered with water at least at times of extreme high tide. The said area of swamp and overflowed lands to the

north and west was also at extreme high tide largely covered with water and, except for a sand ridge along the shore of San Pablo Bay washed up by the waters of said Bay, was swampy and marshy and subject to overflow and entirely unfit for cultivation or use of any kind without reclamation.

That most of said swamp and overflowed lands to the north and west lie within the boundaries of that certain State segregation survey known as Swamp and Overflow Land Survey No. 569, made on behalf of the State of California in June of 1869. The lands included within said survey are hereinafter referred to as Survey 569. The lands lying between the southeasterly boundary of said Survey 569 and Mare Island, including said narrow neck of marsh hereinbefore mentioned, are embraced within that certain State segregation survey known as Swamp and Overflow Land Survey No. 34, which lands are hereinafter referred to as Survey 34.

II.

On September 28, 1850, the United States, by Act of Congress known as the Swamp Land Act, granted to the State of [85] California all unsold swamp and overflowed lands unfit for cultivation lying within said State. All of the lands within said Survey 569 were of the character of the lands so granted by said Act.

On or about the 7th day of April, 1874, the State of California, having heretofore and in the year 1869 sold the lands in Survey 569 to one Jacob C.

Hinckley, issued its patents for said land to one John W. Pearson, as assignee of said Hinckley. Thereafter these defendants by mesne conveyance acquired from said Pearson those portions of said Survey 569 owned by them and more particularly described in Exhibit A to their answer.

III.

In 1853 certain private parties, to-wit: George W. P. Bissell, William H. Aspinwall and Mary S. McArthur, claimed to be the owners of Mare Island as the successors in interest of one Victor Castro, to whom they asserted the Government of Mexico had made a grant of said Island in the year 1841.

In said year 1853 the United States purchased from said Bissell, Aspinwall and McArthur all of their right, title and interest in and to Mare Island and thereupon, as alleged in paragraphs I and IV of the third defense of these defendants as set forth in the amendment heretofore made to their answer, took possession of Mare Island and established thereon and has ever since maintained a navy station or naval yard.

When the United States first took possession of said Mare Island as aforesaid, it did not occupy any part either of said Survey 34 or said Survey 569, and while thereafter it occupied and used portions of Survey 34 adjoining Mare Island, it has never at any time used any portion of said Survey 569 and, [86] except as hereinafter set forth in subdivision V hereof, has not had possession or at-

tempted to take possession of any portion of said survey.

IV.

On or about the 3rd day of January, 1883, one D. W. Bouldin and one A. P. Moore brought an action in ejectment against the then commandant of the Mare Island Navy Yard, one Thomas S. Phelps, seeking to recover possession of Mare Island, claiming that they were the owners of said Island by virtue of the asserted grant of the same hereinbefore mentioned by the Mexican Government to Victor Castro, asserting in that behalf that they and not said Bissell, Aspinwall and McArthur were the successors in interest of said Castro. As alleged in subparagraph (a) of subdivision II of the first defense in the answer of these defendants, said action was defended by and at the expense of the United States, which set up by way of defense to said action that the purported grant to said Victor Castro, hereinbefore mentioned, under which said Bissell, Aspinwall and McArthur had claimed title to said Island and under which the plaintiffs in said ejectment suit, said Bouldin and Moore, were then claiming title, was in fact fraudulent and void and that the instrument purporting to constitute and evidence said grant had in fact not been made until 1850 and after the Mexican sovereignty of California had ceased. Upon the trial of said action said defense was sustained and it was held that said purported grant to Victor Castro was in fact fraudulent and void and that the instrument pur-

porting to constitute and evidence said grant had not been made until 1850. [87]

V.

Shortly prior to September 13, 1883, the then commandant of Mare Island Navy Yard, one John Irwin, asserted the right as such commandant to the possession of said Survey 569 as being property of the United States and excluded therefrom the predecessors in interest of these defendants. Thereupon and on September 13, 1883, said predecessors in interest of these defendants brought an action in ejectment against said Irwin for the recovery of said Survey 569, all as more particularly set forth in sub-paragraph (b) of subdivision II of the first defense in the answer of these defendants. As there stated, said action was defended at the expense and on behalf of the United States and upon the ground that the lands of which said commandant had taken possession were a part of Mare Island and were owned by the United States. On July 8, 1886, the United States Circuit Court, Ninth Judicial District for the District of California, gave judgment in said action in favor of the plaintiffs therein and against said commandant, expressly finding and holding that the lands embraced in said Survey 569 were not a part of Mare Island and were not owned by the United States, but on the contrary the plaintiffs in said action were the owners thereof as the successors in interest of the State of California, as the grantee of the United States under the grant

made by said Swamp Land Act. The United States, in the name of said Irwin but at its own expense and on its own behalf, prosecuted an appeal from said judgment to the Supreme Court of the United States and on February 3, 1890 said judgment was affirmed by said court.

VI.

From the affirmance of said judgment until the commence- [88] ment of this action said judgment was and has been accepted by the United States and by the State of California and by all persons interested in said lands as conclusively establishing that none of said Survey 569 was owned by the United States, and until the commencement of this action on the 22nd day of April, 1930, the United States asserted no claim to any right or interest in said lands.

VII.

Following the affirmance of said judgment one L. E. Cross purchased for a valuable consideration the lands included in said Survey 569 and thereupon took possession of the same and in the year 1896 commenced the reclamation of the portion of said Survey 569 nearest Mare Island by the construction of extensive levees and drainage works. Preliminary to the construction of said levees and drainage works the then commandant of the Mare Island Navy Yard and said Cross jointly caused a survey to be made for the purpose of determining the southeasterly boundary line of said Survey 569

in order that said Cross might construct a levee along said line and such levee was thereupon constructed by said Cross. Said levees and drainage works were completed by said Cross on or before the year 1899 at an expense of many thousands of dollars and said Cross thereupon built roads and erected farm houses and other farm buildings on said Survey and commenced the farming and cultivation of a large part of the same, and such farming and cultivation by said Cross and his successors in interest has continued until the present time.

That portions of said Survey not cultivated were, following the affirmance of said judgment, improved at very considerable [89] expense by certain of these defendants or their predecessors in interest as wild duck preserves by the construction of levees, the making of ponds and the construction of roads and buildings.

That in 1926 and subsequent to the issuance by the United States of patents to the State of California for all of said Survey 569, the defendant Sears Point Toll Road Co. constructed a public toll road across said Survey 569 at an expense likewise in excess of many thousands of dollars.

That ever since the predecessors in interest of these defendants took possession of said lands following the affirmance of said judgment against said Irwin, they and their successors in interest have had the open, visible, exclusive and undisturbed possession of said Survey 569.

VIII.

Following the affirmance on February 3, 1890, of said judgment against said Irwin, the United States on June 5, 1896, patented to the State of California all those portions of said Survey 569 lying in Township 3 North, Range 5 West, M. D. B. & M., and on February 7, 1910, patented to the State of California all those portions of Survey 569 lying in Township 4 North, Range 5 West, M. D. B. & M., said patents being the patents referred to in the Bill herein as Swamp Land Patents Nos. 72 and 152, respectively. The lands so patented are the portions of said Survey 569 most remote from said Mare Island, the nearest point of the same being approximately five miles therefrom.

Thereafter application was made for the issuance of a patent to the State of California for the balance of said Survey 569, to-wit: those portions of said Survey lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. Upon said application [90] being made, the Secretary of the Interior, under date of October 18, 1912, addressed a letter to the Secretary of the Navy requesting of him such data as might be in the latter's possession relative to the limits of the lands embraced in Mare Island, to the end that the matter of segregating from Mare Island swamp and overflowed lands granted to the State of California might be considered. Under date of February 1, 1913, the Acting Secretary of the Navy replied by letter to the Secretary of the Interior calling attention to the judg-

ment in the action of ejectment against John Irwin hereinbefore mentioned, holding that the lands embraced within said Survey 569 were not a part of Mare Island, and with said letter forwarded to the Secretary of the Interior a map or plat showing the limits of Mare Island and showing as the northwesterly boundary line thereof the southeasterly boundary line of said Survey 569.

Thereafter and on November 10, 1913, pursuant to an Act of the Legislature of the State of California passed in 1897, ceding to the United States the exclusive jurisdiction of all lands within the State of California held, occupied or reserved by the United States for military purposes or defense, the United States filed and recorded in the office of the County Recorder of the County of Solano a map showing the boundaries of said Mare Island Reservation and upon said map the northwesterly boundary line of said Reservation is shown as the southeasterly boundary line of said Survey 569.

Thereafter the Department of the Interior directed that appropriate surveys be made of said Townships 3 and 4 North, Range 4 West, M. D. B. & M., for the purpose of segregating the swamp and overflowed lands therein granted to the State of California by said Swamp Land Act, and directed that such surveys [91] should be limited to the lands in said townships lying to the north and west of said southeasterly boundary line of said Survey 569. Such surveys were made and approved and

the Secretary of the Navy having been again consulted by the Secretary of the Interior as to lands claimed by the United States and being advised by the latter by letter under date of June 4, 1923, that all of the lands lying within said Survey 569 had been lost to the United States by reason of the judgment in said ejectment action, the Secretary of the Interior ordered all of the lands within said Survey 569 not theretofore patented to the State, to-wit: the lands in said Survey lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M., to be patented to the State of California, and pursuant to said order said lands were by the United States patented to the State of California by the patent referred to in the Bill herein dated April 26, 1924, and numbered 937055.

IX.

Each of these defendants prior to the commencement of this action purchased for valuable consideration from the successors in interest of the State of California the land alleged in the answer of these defendants to be owned by him, her or it, respectively, doing so subsequently to the issuance by the United States of its patents to the State of California for said land and in reliance upon said patents.

X.

That by reason of the foregoing facts the United States is estopped in equity and good conscience from asserting as against these defendants that any

part of said Survey 569 is [92] a part of Mare Island or that it has any right or title thereto.

HENRY E. MONROE,
WARREN OLNEY, JR.,
J. M. MANNON, JR.
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
WARREN OLNEY, III,
Solicitors for answering defendants.
McCUTCHEN, OLNEY, MANNON & GREENE,
Of counsel.

[Endorsed]: Filed Jun. 15, 1937. [93]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT JAMES IRVINE TO THE AMENDED BILL OF COMPLAINT AND TO THE AMENDMENTS THERETO.

Comes now James Irvine, one of the defendants named in the above entitled action, and answering complainant's Amended Bill of Complaint on file herein and the Amendments thereto on file herein, (all hereinafter for convenience referred to as the Bill), admits, denies and alleges as follows, to-wit:

[94]

I.

Answering the allegations of Subdivision II of the Bill, this defendant denies that complainant is the owner of, or at any time subsequently to September 28, 1850, ever was the owner of, the lands or any of the lands described in said Subdivision II of the Bill; denies that complainant has ever occupied said lands or any thereof, either as a part of the Mare Island Navy Yard Reservation, or for public or military or naval purposes, or otherwise or at all; and denies that complainant has ever been in the possession of said lands or any thereof, or that it is, or at any time since September 28, 1850, ever was, entitled to the possession of said lands or any thereof.

Further answering the allegations of said Subdivision II of the Bill, this defendant alleges the fact to be that he is the owner of a portion of or an interest in the said lands described in the Bill, his ownership and interest being those more particularly set forth in "Exhibit A" attached hereto and by this reference hereby made a part of this answer; that the lands of this defendant described in said "Exhibit A" are shown in color upon the plat attached hereto as "Exhibit B" and hereby made a part of this answer; that the lands described in said "Exhibit A" have for more than fifty years last past been in the possession of this defendant, and of his respective predecessors in interest (exclusive of complainant); that this defendant and his said predecessors were entitled to the possession

of said lands during all of said period; and that said possession of said lands by this defendant and his respective predecessors in interest has at all times been open, notorious, under claim of right and under color of title, and adverse to complainant and to the whole world. [95]

II.

Answering the allegations of Subdivision III of the Bill, this defendant denies that by an instrument dated May 2, 1841, or otherwise, executed by Juan B. Alvarado, Constitutional Governor of the Department of California, or by any other person, a grant was made by the Government of Mexico to Victor Castro of the lands described in the Bill, or of any of said lands, or of any lands at all; denies that any of the lands described in the Bill was ever granted by the Mexican Government to any person whomsoever; denies that "Exhibit A" to the Bill is, and alleges that it is not, a copy of the said grant in the Bill alleged, or of any grant made by the Government of Mexico; denies that there was ever any grant made by the Government of Mexico to Victor Castro which was filed for record in the office of the County Recorder of and for Sonoma County, California, or in any other county or place whatsoever, either on July 28, 1852, or at any other time, and alleges that no such grant was ever made; denies that any grant by the Mexican Government of any of the said lands described in the Bill was ever filed for record in the office of said

County Recorder of Sonoma County, California, or in any other county or place whatsoever, and alleges that no such grant was ever so filed; denies that said Victor Castro ever had any right or title to said above-mentioned lands, or any of them, and alleges that said Victor Castro never had any right or title in or to any of said lands; denies that George W. P. Bissell and William H. Aspinwall, or either of them, ever acquired any right or title thereto, from Victor Castro, or otherwise, or that they or either of them ever had any [96] right or title in or to said lands or to any thereof, and alleges that neither of them ever had any such right or title; denies that said Bissell and Aspinwall, or either of them, or anyone ever filed in the office of the Board of Land Commissioners empowered to ascertain and settle private land claims in the State of California, either on August 31, 1852, or at any other time, their or any petition seeking the confirmation to them of the lands or any of the lands described in the Bill, and alleges that no such petition was ever so filed; denies that any proceedings were ever had before said Board of Land Commissioners with respect to said above-mentioned lands, or any of them, or that any decree was ever given or made or entered by said Board confirming to anyone the said lands or any thereof, and alleges that no such proceedings were ever had and that no such decree was ever given or made or entered.

Further answering the allegations of said Subdivision III of the Bill, and also the allegations of the subsequent subdivisions thereof, this defendant alleges the fact to be that none of the lands described in the Bill is now or ever was a part of Mare Island, and in this connection more particularly alleges that a great part of the lands owned by this defendant and described in "Exhibit A" to this answer lies to the north and east of Dutchman's Slough, which is a navigable slough, and in most places of considerable width, whereas Mare Island lies far to the south and east of said Dutchman's Slough, and is entirely cut off from said part of said lands of this defendant by said Dutchman's Slough, and that said lands are not now nor have [97] they, or any of them, ever been contiguous to said Mare Island, or any part thereof, but, as aforesaid, are and always have been cut off therefrom by said Dutchman's Slough; alleges that none of said lands described in the Bill was ever included or involved in, or affected by, any proceedings whatever taken or had for the confirmation of any grant or alleged grant by the Mexican Government to Victor Castro of said Mare Island, or of any other grant or alleged grant by said Mexican Government.

Further answering the allegations of said Subdivision III of the Bill and also the allegations of the subsequent subdivisions thereof, this defendant alleges the fact to be that Victor Castro claimed that Mare Island was granted to him on or about

May 20, 1841, by the Government of Mexico, acting through Juan B. Alvarado, Constitutional Governor of the Department of California; that the Mare Island so claimed by said Victor Castro did not include the lands or any of the lands described in the Bill; that in fact no such grant as claimed was ever made by said Juan B. Alvarado or by the Mexican Government to said Victor Castro, or to any one else, and that the pretended grant under which said Victor Castro claimed was in fact executed by said Alvarado, if executed by him at all, long after the acquisition of California by the United States and subsequent to the time when said Alvarado ceased to be such Governor, and was fraudulently antedated May 20, 1841; that said Bissell and Aspinwall, claiming to have succeeded to the rights and title of said Victor Castro to Mare Island under said grant, filed with said Board of Land Commissioners [98] on or about August 31, 1852, a petition against the complainant herein seeking the confirmation to the said Bissell and Aspinwall of said Mare Island; that before any proceedings were had upon said petition and before any evidence was taken thereon and on or about the 4th day of January, 1853, said Bissell and Aspinwall, and one Mary S. McArthur, sold and conveyed to the complainant herein (i.e., to the defendant in said proceedings before said Board of Land Commissioners) all of their right and title under said alleged grant and in and to said Mare

Island, but that none of the lands owned by this defendant and described in "Exhibit A" to this answer was included, or intended to be included, in said conveyance; that thereupon complainant herein became the owner and in control of both sides of said proceedings and was and thereafter at all times continued to be the dominus litis upon both sides thereof; that thereafter complainant permitted certain proceedings to be had before said Board and on the 8th day of May, 1855, permitted said Board to make and file a decree in said proceedings purporting to confirm said claim to Mare Island to said Bissell and Aspinwall, that said decree was and is null and void and of no effect.

That thereafter and on the 23rd day of October, 1855, complainant caused and permitted to be filed in this Honorable Court a petition for a review of said decision and decree of said Board, not for the purpose of defending or establishing any right, title or interest as against said claimants, Bissell and Aspinwall, but solely for the purpose of obtaining a judgment and decree to be used against [99] third persons, and caused and permitted said matter to be submitted to this Honorable Court; that thereafter, without any hearing by this Honorable Court and without its considering the transcript of the aforesaid proceedings before said Board of Land Commissioners, which had theretofore been filed with this Honorable Court, and without considering or adjudicating the merits of the matter and solely

by reason of the consent of the complainant herein, this Honorable Court made a minute order on March 2, 1857, purporting to be for a decree confirming said decree of said Board; that there were no further steps or proceedings taken in said matter by complainant or by said ostensible claimants (other than an ineffectual appeal to the United States Supreme Court which was dismissed at the direction of the Attorney General of the United States) nor was there ever any decree made or entered therein, either pursuant to said last-mentioned minute order or otherwise, until 73 years thereafter, when, only 7 days before the filing of the Bill herein, and with the bringing of this suit directly in view and for the purpose of adversely affecting the rights of the defendants in this suit (complainant claiming that the lands described in the Bill herein were and are a part of Mare Island) and without giving this defendant any notice or opportunity to be heard and wholly ex parte, claimant requested and caused this Honorable Court on April 15, 1930, to make and sign a decree nunc pro tunc as of March 2, 1857, purporting to confirm the said decree of said Board of Land Commissioners; that complainant procured said decree nunc pro tunc for the purpose of adversely affecting the rights of the defendants [100] in this suit notwithstanding that, subsequently to the making of said minute order of March 2, 1857, the following proceedings had been had and the following things had occurred:

(a) On or about the 3rd day of January, 1883, an action of ejectment was brought in the Superior Court of the State of California in and for the County of Solano by D. W. Bouldin and A. P. Moore against Thomas S. Phelps, who was then the Commandant of the Mare Island Navy Yard and in possession of Mare Island, to recover the possession of said Mare Island; that thereafter and on the 14th day of January, 1883, said action was removed by said defendant Phelps to the United States Circuit Court, Ninth Judicial Circuit, for the District of California; that the plaintiffs in said action claimed title to said Mare Island under the aforesaid Mexican grant from Juan B. Alvarado to Victor Castro and under mesne conveyances from said Victor Castro, which conveyances were claimed to have been made prior to the alleged conveyance from Victor Castro under which said Bissell and Aspinwall claimed; that defendant Phelps was represented in said action by S. G. Hilborn, the United States District Attorney for the District of California, and, in addition thereto, the Attorney General of the United States appointed Judge A. L. Rhodes as a special assistant attorney of the United States to appear in said case on behalf of complainant and to assist in the defense of said action, and said counsel controlled and conducted the defense of said [101] action; that the only right, title

or interest in or to said lands set up by defendant Phelps in defense of said action was the title to the aforesaid lands claimed by complainant herein, said defendant and said counsel expressly disclaiming that said defendant had any other right, title or interest in or to said lands or any part thereof; that said defendant and said counsel asserted and produced evidence showing that said Mexican grant from said Juan B. Alvarado to said Victor Castro of said Mare Island was in fact fraudulent and void and was not made until 1850 and long after the Mexican sovereignty of California had ceased, and that said grant was fraudulently antedated to May 20, 1841; that said cause was tried before Circuit Judge Lorenzo Sawyer and District Judge Ogden Hoffman, who found and held that said Mexican grant of Mare Island was in fact fraudulent and void; that the court's opinion in said cause is reported in full in 30 Fed. 547.

(b) Prior to the 13th day of September, 1883, John Irwin, as commandant of said Mare Island Navy Yard, claimed that the lands described in the Bill were a part of Mare Island and as a result thereof and on said last-mentioned date an action in ejectment was brought in the Superior Court of the State of California in and for the County of Solano by The San Francisco Savings Union, The Bank of California and George A. Nourse, the owners

of said lands and the predecessors in interest of the defendants in [101-A] this suit, against said John Irwin, for the said lands described in the Bill; that thereafter and on the 6th day of October, 1883, said action was removed by said defendant Irwin to the United States Circuit Court, Ninth Judicial Circuit, for the District of California; that said lands were claimed by the plaintiffs in said action under the Swamp Land Act of September 28, 1850 (9 Stats. 519) as successors in interest to the State of California; that defendant Irwin was represented in said action by said S. G. Hilborn, the United States District Attorney for the District of California, and in addition thereto, the Attorney General of the United States appointed Judge A. L. Rhodes a special assistant attorney of the United States to appear in said case on behalf of the complainant and to assist in the defense of said action, and said counsel in fact conducted the defense of said action; that the only right, title or interest in or to said lands set up by defendant Irwin in defense of said action was the title to the aforesaid lands claimed by complainant herein, said defendant Irwin and said counsel expressly disclaiming that said defendant had any other right, title or interest in or to said lands or any part thereof; that said defendant and said counsel asserted and presented evidence in an attempt to show that the complainant herein had title

to said lands as a part of Mare Island by virtue of being successor in interest of said Victor Castro under the aforesaid Mexican grant of said Mare Island to said Victor Castro and that complainant also had title [102] thereto by virtue of the reservations attempted to be made by the President of the United States referred to in Subdivisions VI and VII of the Bill, said contentions both as to said lands being a part of said Mare Island and included in said grant to Victor Castro and as to said reservations by the President of the United States being in all respects precisely the contentions now made on behalf of the complainant in this suit; that said action was tried before Mr. Justice Field of the United States Supreme Court then sitting on circuit and before District Judge Hoffman, and they expressly found and held that said lands were not a part of Mare Island nor were they or any part thereof included within said grant of said Mare Island to said Victor Castro; and that none of said lands was affected by the said attempted reservations by the President of the United States mentioned in subdivisions VI and VII of the Bill, and that complainant had no right or title thereto, but that, on the contrary, the title thereto was in the plaintiffs in said action; that the opinion of the court in so holding is reported in full in 28 Fed. 708; that thereafter the Acting Attorney General of the

United States wrote to said Judge Rhodes, special counsel for complainant as aforesaid, and directed him to sue out a writ of error in said action; that pursuant to such direction a writ of error was sued out and the matter brought before the Supreme Court of the United States; that said cause was argued before the Supreme Court of the United States on behalf of the plaintiff in error, the said John Irwin, by Mr. Assistant Attorney [103] General William A. Maury representing the complainant herein; that on the 3rd day of February, 1890, the Supreme Court of the United States affirmed the judgment in favor of said plaintiffs in said action, the Supreme Court's opinion being reported in 136 U. S. 578; that following such affirmance and based thereon complainant thereafter issued patents to the State of California covering all of the lands described in the Bill, all as hereinafter more particularly set forth; that notwithstanding the facts aforesaid and for the purpose of affording a pretended ground for re-litigating the matters which were decided in said action and of adversely affecting the rights of the defendants in this suit, complainant procured the making and entry of said decree nunc pro tunc as aforesaid.

III.

Answering the allegations of Subdivision IV of the Bill, this defendant denies that said Board of Land

Commissioners was vested with or had any power or authority to make the confirmation alleged and set forth in the Bill, either by virtue of the Act of Congress approved March 3, 1851 (9 Stats. 631) or otherwise or at all, but on the contrary allege the fact to be that said Board had no power or authority or jurisdiction in the premises on account of the facts and circumstances set forth in the preceding subdivision of this Answer; admits that said Bissell and Aspinwall, claiming a right to said Mare Island under the aforesaid grant to Victor Castro, presented their said claim to said Board of Land Commissioners, but denies [104] that said Bissell and Aspinwall, or either of them, then had or ever had any right or title to said Mare Island; or any part thereof, derived either directly or indirectly from the Mexican Government or otherwise or at all; alleges that prior to the taking or presentation of any evidence before said Board, said Bissell and Aspinwall sold and conveyed all of their right and title to said Mare Island to the complainant herein, all as in the preceding subdivision of this Answer set forth; alleges that the evidence presented to and considered by said Board was presented and considered under the circumstances hereinabove set forth and not otherwise; denies that said Board determined the validity of said claim to Mare Island, and alleges that the facts in this behalf are as in the preceding subdivision of this Answer set forth and not otherwise; admits that said Board on October 23, 1855, filed a certi-

fied transcript of said case and of their proceedings and decision with the Clerk of this Honorable Court, but denies that said proceedings, or any of them, or that said decree, was valid, and alleges the fact to be that the same were and each of them was null and void and of no effect, all as more particularly set forth in the preceding subdivision of this Answer.

Further answering the allegations of subdivision IV of the Bill, this defendant denies that pursuant to the terms of Sections 9 and 10 of the aforesaid Act of March 3, 1851 (9 Stats. 631), or otherwise, complainant herein, either by its District Attorney or otherwise, duly presented its petition to this Honorable Court praying a review of said decision and decree of said Board, or for a decision upon the validity of said claim to Mare Island, or that complainant herein, duly or otherwise, complied with the law or the requirements governing such [105] petitions for review, but on the contrary alleges the true facts to be as stated in the preceding subdivision of this Answer and not otherwise; denies that the aforesaid minute order of this Court of March 2, 1857, purporting to be for a decree confirming said decree of said Board was duly given or made, but on the contrary alleges the fact to be that said minute order was made solely by reason of the facts and circumstances hereinbefore alleged. and alleges that said minute order was and is null and void and not binding upon these defendants, or any of them;

denies that the aforesaid decree nunc pro tunc was duly given or made, but on the contrary alleges the fact to be that said decree was made solely by reason of the facts and circumstances hereinbefore alleged, and alleges that said decree was and is null and void and not binding upon this defendant.

Further answering the allegations of Subdivision IV of the Bill this defendant admits and alleges that this defendant claims under and as a successor to the complainant herein by virtue of a grant made by complainant to the State of California on September 28, 1850, of all of the lands described in the Bill, said lands then being swamp and overflowed lands within the State of California, all pursuant to the Act of September 28, 1850 (9 Stats. 519), all of said last-mentioned lands being within and subject to the provisions of said swamp land grant; alleges this defendant claims an interest in said lands as more particularly set forth in "Exhibit A" to this Answer; denies that this defendant, or any of his predecessors in interest, are or were in privity with complainant herein in said appeal from said decision of said Board of Land Commissioners, but on the contrary alleges the [106] fact to be that complainant herein had no right or power or authority whatever to represent this defendant, or any of his predecessors in interest (other than complainant itself) in said proceedings; denies that this defendant is bound by said nunc pro tunc decree, but on the contrary alleges the fact to be that this defendant is not bound

thereby; denies that any of the proceedings aforesaid in any way related to or included or involved or affected any of the lands described in the Bill, and particularly any of the lands of this defendant described in "Exhibit A" to this answer; and alleges the fact to be that none of said proceedings in any way related to or included or involved or affected any of said lands.

IV.

Answering the allegations of subdivision IV (a) of the Bill, as added by amendment thereto, this defendant denies that in July, 1877, the Surveyor General of California in compliance with the thirteenth section of the act entitled "An Act to ascertain and settle the private Land Claims in the State of California", approved March 3, 1851, caused said private land claim for Mare Island to be surveyed and a plat to be made thereof, and in this connection alleges the facts to be that in July, 1877, purporting to act pursuant to the provisions of an act entitled "An Act to expedite the settlement of titles to lands in the State of California" approved July 1, 1864 (13 Stats. 332), the United States Surveyor General of California appointed United States Deputy Surveyor James E. Freeman as special deputy to survey the claim for Mare Island although no final decree of confirmation had been made or entered; that [107] pursuant to such appointment said James E. Freeman made what purported to be survey and plat of said Mare Is-

land which were filed in the office of said Surveyor General of California in or about the month of August, 1877; admits that said Surveyor General of California thereupon gave notice that the same had been done by publication once a week for four consecutive weeks in two newspapers, one published in the City of San Francisco, to wit, the "Alta California", and one published near the land surveyed, to wit, the "Vallejo Evening Chronicle" published in the City of Vallejo, County of Solano, State of California, and alleges the fact to be that the date of first publication in San Francisco was October 11, 1877; admits that said Surveyor General of California retained in his office for public inspection the said survey and said plat until ninety days from the date the first publication in San Francisco had expired; denies that no objections were made to said survey and alleges the fact to be that on the 14th day of July, 1879, a protest against said survey and said plat of Mare Island was filed in the office of said Surveyor General of California by Bernard T. Hanley, Esq., as attorney for owners; denies that said Surveyor General of California approved said survey and said plat or either of them and alleges the fact to be that said Surveyor General of California expressly disapproved of the same because they improperly included a large quantity of land which was not a part of said Mare Island, the said lands so erroneously included being for the most part the very lands which are the subject of this litigation, said Surveyor Gen-

eral of California disapproving the inclusion of any of the lands involved in this litigation as a part [108] of said Mare Island; alleges the fact to be that said survey and said plat did not include or even purport to include any portion of the lands owned by this defendant, and described in "Exhibit A" to this answer, which lie to the north and east of said Dutchman's Slough; denies that copies of said survey and said plat were, or that a copy of either of them was, forwarded by said Surveyor General of California to the Commissioner of the General Land Office at Washington for his examination and approval at the expiration of said ninety days after the aforesaid date of first publication in San Francisco and alleges the fact to be that at no time prior to August 7, 1879, was any copy of said plat or of said survey forwarded to said Commissioner of the General Land Office for his examination and approval; denies that thereafter the Commissioner of the General Land Office approved said survey or said plat but alleges the fact to be that said Commissioner of the General Land Office has never approved said survey or said plat; alleges that this defendant is without knowledge as to whether said Commissioner of the General Land Office caused the said survey or said plat to be filed in a jacket called the Mare Island Jacket in the files of military reservations in the General Land Office; denies that thereafter and on September 22, 1905, or at any other time, the Commissioner of the General Land Office expressly or

otherwise approved or used or acted upon said purported survey or said purported plat, and alleges the fact to be that at no time has said Commissioner of the General Land Office ever expressly or otherwise approved or used or acted upon the said survey and the said plat, or either of them; [109] denies that thereafter and on September 28, 1905, or at any other time the Secretary of the Interior expressly or otherwise approved or concurred in any action of the Commissioner of the General Land Office in approving said survey or said plat or in using or acting upon the same, or that said Secretary of the Interior ever approved or used or acted upon said survey or said plat and alleges the fact to be that the Secretary of the Interior has never approved said survey or said plat or used or acted upon them, or either of them; admits that some of the lands described in the Bill were erroneously included within the exterior limits of said survey, but denies that all of said lands were so included and alleges the fact to be that a very large portion of the lands described in the Bill was never included within the exterior limits of said survey, particularly the said portion of this defendant's said lands lying north and east of said Dutchman's Slough, and alleges the fact to be that such of said lands described in the Bill as were included within the exterior limits of said survey were erroneously included therein and that, because of said erroneous inclusion, said survey was never approved either by the United States Sur-

veyor General of the State of California or by the Commissioner of the General Land Office or by the Secretary of the Interior, but was expressly disapproved by said United States Surveyor General; denies that any of the said lands described in the Bill was or is included within the exterior limits of said pretended Spanish grant of Mare Island, and alleges the fact to be that none of said lands was included within said grant. [110]

V.

Answering the allegations of Subdivision V of the Bill, this defendant admits and alleges that complainant acquired such title and interest in said Mare Island and in the lands described in the Bill as said Bissell and Aspinwall and as said Mary S. McArthur had, but denies that they, or any of them, ever had any title to or interest in said Mare Island, or in or to said lands described in the Bill, or in or to any part thereof; admits that complainant paid a valuable consideration to said Bissell and Aspinwall and McArthur of $83,491; admits that complainant received a deed purporting to convey said Mare Island and some of the lands described in the Bill from said Bissell and Aspinwall and McArthur on January 4, 1853, but alleges the fact to be that said deed did not include or purport to include any of the said lands of this defendant, and particularly said lands lying north and east of said Dutchman's Slough, and further alleges that said deed conveyed no right or title or

interest whatever in or to said lands described in the Bill, or any thereof, to complainant; admits that said deed was filed for record and recorded in the County Recorder's office of Solano County, California, on April 18, 1853, and that a copy of said deed is attached to the Bill and marked "Exhibit B", but alleges the fact to be that said copy is incomplete in that said copy does not contain or disclose the survey upon the basis of which said grantors executed their said deed and conveyed thereby all of their interest in and to "that tract of land and island called and known as Mare Island, in the Bay of San Francisco, as recently surveyed by the board of officers [111] of the United States sent to California for the selection of a site for a navy yard there"; denies that all of the lands described in the Bill now are or ever were situate in said County of Solano, State of California, and on the contrary alleges the fact to be that a considerable portion of Sections 31, 32 and 33 of Township 4 North, Range 4 West, and of Sections 34, 35 and 36 of Township 4 North, Range 5 West, M. D. B. and M. are now and ever since a long time prior to January 1, 1853, have been situate in the County of Napa, State of California.

VI.

Answering the allegations of Subdivision VI of the Bill, this defendant admits that on November 6, 1850, the President of the United States by executive order reserved from sale and for public pur-

poses Mare Island; denies that said Mare Island so reserved ever included, or now includes, the lands described in the Bill, or any of said lands, and in particular any of the said lands of this defendant, and alleges the fact to be that none of the said lands was ever reserved by the President of the United States, either by executive order or otherwise, for public or any other purposes or at all, and further alleges the fact to be that none of said lands has at any time subsequently to September 28, 1850, been public land of the United States or subject to reservation by the United States, but that on the contrary, all of said lands were upon said last-mentioned date granted by the United States to the State of California, and have ever since been owned by the State of California and its subsequent grantees. [112]

VII.

Answering the allegations of Subdivision VII of the Bill, this defendant admits that on February 9, 1853, the Secretary of the Navy of the United States of America, acting under and in pursuance of Section 3 of the Act of August 3, 1852 (10 Stats. 104) selected the tract of land in the Bay of San Francisco bounded by the Bay of San Pablo, the Straits of Carquinez, and Napa Creek, known as Mare Island, together with all its appendages of tule or marsh land ordinarily reputed to belong to said Island, and the harbors, waters and anchorages connected therewith and necessary to the use

of the same, as a site for the Navy Yard and Naval Depot provided for by said Act of Congress, but denies that within said lands are included the lands and premises, or any of the lands or premises, described in the Bill, and in particular any of the said lands of this defendant, and alleges the fact to be that none of the lands described in the Bill, and none of the lands of this defendant, was within the lands so selected by said Secretary of the Navy.

Further answering the allegations of Subdivision VII of the Bill, this defendant admits that following the aforesaid selection, the Secretary of the Navy on February 9, 1853, recommended to the President of the United States that the said lands and premises selected by him as above stated be reserved for public uses, and that on February 11, 1853, President Millard Fillmore approved said recommendation and made said reservation and that said reservation was communicated to the Secretary of the Interior and duly and properly recorded, but alleges the fact to be that none of the lands [113] described in the Bill, and none of the said lands of this defendant was included within the lands so reserved.

Further answering the allegations of Subdivision VII of the Bill, this defendant admits that a copy of the aforesaid selection and recommendations of the Secretary of the Navy, together with the approval of the President of the United States, and his order making said reservation, is attached to the Bill, and marked "Exhibit C", but alleges the

fact to be that said copy is incomplete in that said copy does not include the map or chart referred to therein; admits that from time to time the Congress of the United States has approved, ratified and confirmed said reservation of Mare Island and by various statutes has appropriated large sums to improve the lands comprised therein and authorized their improvement, but, as aforesaid, alleges the fact to be that none of the lands described in the Bill was or is included within the lands so reserved.

VIII.

Answering the allegations of Subdivision VIII of the Bill, this defendant denies that the lands and premises, or any of the lands or premises, described in the Bill is or are included within the boundaries, or is or are a part of the lands or premises described in the alleged grant from Juan B. Alvarado, Governor of California under the rule and occupation of Mexico, to Victor Castro, or that said lands or premises, or any thereof, were or was conveyed by said Juan B. Alvarado to said Victor Castro, but on the contrary alleges the fact to be, as aforesaid, that said grant was fraudulent and void, and that no grant of any lands was ever made by said [114] Juan B. Alvarado to said Victor Castro; denies that any confirmation of said grant was ever made by said Board of Land Commissioners to George W. P. Bissell and William H. Aspinwall, or to either of them, or otherwise or at all; denies that said lands and premises, or any

thereof, are or is included within the boundaries of, or are or is a part of the lands and premises purchased by the United States from said Bissell and Aspinwall and their co-grantor, Mary S. McArthur, or from any of them, and in this connection allege the facts to be as hereinabove in this manner set forth.

IX.

Answering the allegations of Subdivision IX of the Bill, as amended, this defendant denies that continuously since September 16, 1852, and up to and including the year 1880, or at any other time, or at all, complainant occupied the lands, or any of the lands, described in the Bill, by or through its Navy Department and officials or otherwise, or that complainant has used or improved the same, or any thereof, for military purposes in connection with the Naval Station, Navy Yard and premises of the United States on Mare Island, or otherwise or at all.

Further answering said Subdivision IX of the Bill, as amended, this defendant alleges the fact to be that complainant has at no time since September 28, 1850, had possession of or been entitled to possession of the said lands described in the Bill, or any thereof; denies that the alleged possession of complainant during the period from September 16, 1852, to and including the year 1880, was at all times or ever actual or open or adverse or exclusive or under claim of right [115] or under title or under claim or color of title, either that sup-

plied by the aforesaid reservations or by the said deed of January 4, 1853, or by the said decision of the Board of Land Commissioners of May 8, 1855, or by said minute order of this Honorable Court given and made on March 2, 1857, or by said decree of this Honorable Court of April 15, 1930, by relation, or otherwise, or at all; admits that the lands of Mare Island, but denies that any of the lands described in the Bill, were, during the aforesaid period, improved for military and naval purposes by the construction of buildings and improvements thereon, and of signs warning trespassers that said premises were government property; denies that there was about the year 1873 or at any other time located upon the lands described in the Bill a dwelling house erected or maintained or occupied by or on behalf of complainant; denies that a road has ever been built thereon by, or has ever been used under the authority of, complainant; denies that complainant has ever used the lands in question, or any part thereof, for gun range or for target practice; denies that complainant from time to time excavated or dug in said lands or used them, or any thereof, for sand or gravel pits or as a source of supply for said sand or gravel either as complainant required for its use in connection with its use and occupancy of said Naval Reservation or otherwise or at all, and alleges the fact to be that if any of said things had been done by complainant, complainant was thereby a trespasser upon lands which did not belong to it but belonged to this defendant

and to his predecessors in interest; denies that all of the lands described in the Bill, or that any of them, and in particular [116] any of said lands of this defendant, were or was used by complainant in connection with the operation or activities of its naval or military forces or otherwise; alleges that this defendant is without knowledge as to any of the following matters alleged in said Subdivision IX of the Bill, as amended,—"In November, 1873, plaintiff went upon said land described in paragraph II and posted at frequent intervals thereon signs and notices that said property was Government property, and warning trespassers to keep off thereof", and alleges the fact to be that if said things were done by complainant, as so alleged, complainant was thereby a trespasser upon lands which did not belong to it, but belonged to this defendant and to his predecessors in interest.

Further answering the allegations of said Subdivision IX of the Bill as amended, this defendant admits that on the 8th day of July, 1886, or thereabouts, the Circuit Court of the United States for the District of California in an action of ejectment therein pending and numbered 3140 in the records and files of said Court, in which plaintiff was not a party, and in which San Francisco Savings Union, a corporation, and others, were plaintiffs, and John Irwin, then Commandant of complainant's navy yard aforesaid, was defendant, gave and made a judgment in favor of said plaintiffs and against said defendant for the recovery by said

plaintiffs from said defendant of the possession of said lands in the Bill described, and in this connection alleges that the facts with respect to said action are as hereinabove in Subdivision II of this answer set forth [117] and not otherwise; denies that complainant herein was not represented in said action, but on the contrary alleges the fact to be that complainant herein was represented in said proceedings by its own counsel especially employed for that purpose and for the purpose of seeking to aid in the defense of said action, as in Subdivision II of this answer alleged; admits that this defendant and his predecessors have entered upon and occupied that portion of said lands which is owned by him and described in "Exhibit A" to this answer, but denies that said occupancy was or is in consequence of said judgment, and in this connection alleges the fact to be that this defendant and his predecessors were in possession and occupation of said lands long prior to said judgment and that they continued in the possession and occupancy of said lands thereafter and continuously up to the present time; admits that this defendant has withheld possession of said lands from complainant, without complainant's consent, and in this connection alleges, as aforesaid, that complainant is not and never has been since September 28, 1850, entitled to the possession of said lands or any thereof; denies that this defendant has no other entry or right of entry or possession of said lands, except after said judgment, but alleges the fact to be that defendant and his predecessors

(exclusive of complainant) have had entry and right of entry and right of possession of and to all of said lands ever since September 28, 1850.

X.

Answering the allegations of Subdivision X of the Bill, this defendant admits and alleges that the lands [118] described in the Bill were claimed by the State of California under and by virtue of the Act of September 28, 1850 (9 Stats. 519) commonly known as the "Swamp Land Act", by which the whole of those swamp and overflowed lands within the State of California made unfit thereby for cultivation, comprising part of the public domain of the United States of America on the date of passage of said Act and remaining unsold, were granted to the State of California; alleges that said lands and all of said lands described in the Bill were of the character described in the aforesaid Act of September 28, 1850, and were at the date of said Act part of the public domain and unsold and by said Act passed to the State of California; admits and alleges that said lands were surveyed in the year 1869 under the authority of the State of California and identified by said survey as Survey No. 569 and as containing 7413.48 acres in area, and that thereafter the State of California issued its patent conveying all of the lands included in said survey to George W. Pearson under date of April 7, 1874, and describing them according to said Survey No. 569.

XI.

Answering the allegations of Subdivision XI of the Bill, this defendant admits that he claims a right, title or interest in or to said lands described in the Bill, through and by virtue of mesne conveyances vesting in him the title of said George W. Pearson or some part or parcel thereof, and in this behalf alleges that this deefndant claims the right, title or interest in and to said lands more particularly set forth in "Exhibit A" attached hereto; admits that this defendant claims such right, title [119] or interest adversely to the complainant; denies that such claim is without right or foundation in law or in fact, but on the contrary alleges the fact to be that all of said claim is of right and is founded both upon law and fact; alleges that this defendant is without knowledge as to any of the following matters alleged in said Subdivision XI of the Bill—"That there are other persons to complainant unknown claiming some right, title, estate, lien or interest in the real property described in paragraph II of this complaint, adverse to the complainant's ownership, and casting a cloud upon the complainant's title therein; that the claims of said persons are wholly without rights or merit in law or in fact".

XII.

Answering the allegations of Subdivision XII of the Bill, this defendant admits and alleges that on April 26, 1924, a patent numbered 937055 was issued to the State of California by the United States

under the provisions of said Act of September 28, 1850, known as the Swamp Land Act, which said patent included all of the lands described in subparagraph (B) of Subdivision II of the Bill which lie in Township 3 and 4 North, Range 4 West, M. D. B. and M.; admits and alleges that on June 5, 1896, a patent known as Swamp Land Patent No. 72 was issued to the State of California by the United States under the provisions of said Swamp Land Act, which said patent included all of fractional Section 1 of Township 3 North, Range 5 West, M. D. B. and M., containing an estimated area of 177 acres described in subparagraph (B) of Subdivision II of the Bill; and admits and alleges that on [120] February 7, 1910, a patent known as Swamp Land Patent No. 152 was issued to the State of California by the United States under the provisions of said Swamp Land Act, which said patent includes all of the lands described in subparagraph (B) of Subdivision II of the Bill lying in Township 4 North, Range 5 West, M. D. B. and M.

Further answering the allegations of said Subdivision XII of the Bill this defendant alleges that each of the said patents is, and ever since the date of its issuance has been, in all respects valid and in full force and effect, and denies that said patents then were or now are, or that any of said patents then was or now is, either void, or of no force or effect, or of no validity, in so far as the same grant or convey or include or describe the lands, or any

of the lands mentioned in the Bill, either for the reasons set forth in said Subdivision XII of the Bill, or otherwise or at all; denies that said lands described in said patents ever were, or that any of said lands ever was, held in private ownership under or by virtue of the aforesaid alleged grant from Mexico to said Victor Castro, either at the time of the passage and approval of said Swamp Land Act, or at any other time or at all; denies that said lands were not then a part of the public domain, but on the contrary allege that at the date of said Swamp Land Grant to-wit, September 28, 1850, all of said lands described in the Bill were part of the public domain of the United States; denies that complainant has owned or occupied any of said lands at any time other than as a part of the public domain, and denies that complainant has ever owned or occupied said lands, [121] or any of them, as the successor in interest to said Victor Castro under said grant from the Government of Mexico; denies that any of said lands has ever been selected for or devoted to the public purposes of the United States, and denies that any of said lands has ever been withdrawn from entry by private persons as alleged in Subdivision VI and VII of the Bill, or otherwise (except as a result of the grant of said lands to the State of California under said Swamp Land Act, as aforesaid) either prior to the issuance of the aforesaid patents, or any of said patents, or at any other time or at all.

XIII.

Answering the allegations of Subdivision XIII of the Bill, this defendant alleges that he has no knowledge of any of the matters or things in said Subdivision alleged.

XIV.

Answering the allegations of Subdivision XIV. of the Bill this defendant denies that complainant is without adequate remedy in the premises at law, and denies that complainant is entitled to any remedy whatsoever in the premises.

Wherefore, this defendant prays judgment as follows:

1. That complainant is not the owner of any of the real property described in "Exhibit A" attached to this answer, or to any part thereof, and that complainant has no right or title or interest in or to said real property, or any part thereof.

2. That this defendant is the owner of the interest in said real property described in said "Exhibit A" set [122] forth therein, and that said defendant is in and entitled to possession of such interest.

3. That the complainant be perpetually enjoined from asserting any claim or title whatsoever in or to said real property, or any thereof, adverse to this defendant.

4. That this defendant have such further or different relief as may be agreeable to equity and good conscience.

5. That this defendant have and recover his costs of suit herein incurred.

W. H. SPAULDING
STONEY, ROULEAU,
STONEY & PALMER
Solicitors for said Answering Defendant.

United States of America,
Northern District of California,
City and County of San Francisco—ss.

James Irvine, being first duly sworn, deposes and says:

That he is one of the defendants named in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

JAMES IRVINE

Subscribed and sworn to before me this 18th day of March, 1936.

[Seal] W. W. HEALEY
Notary Public in and for the City and County of San Francisco, State of California. [123]

"EXHIBIT A"

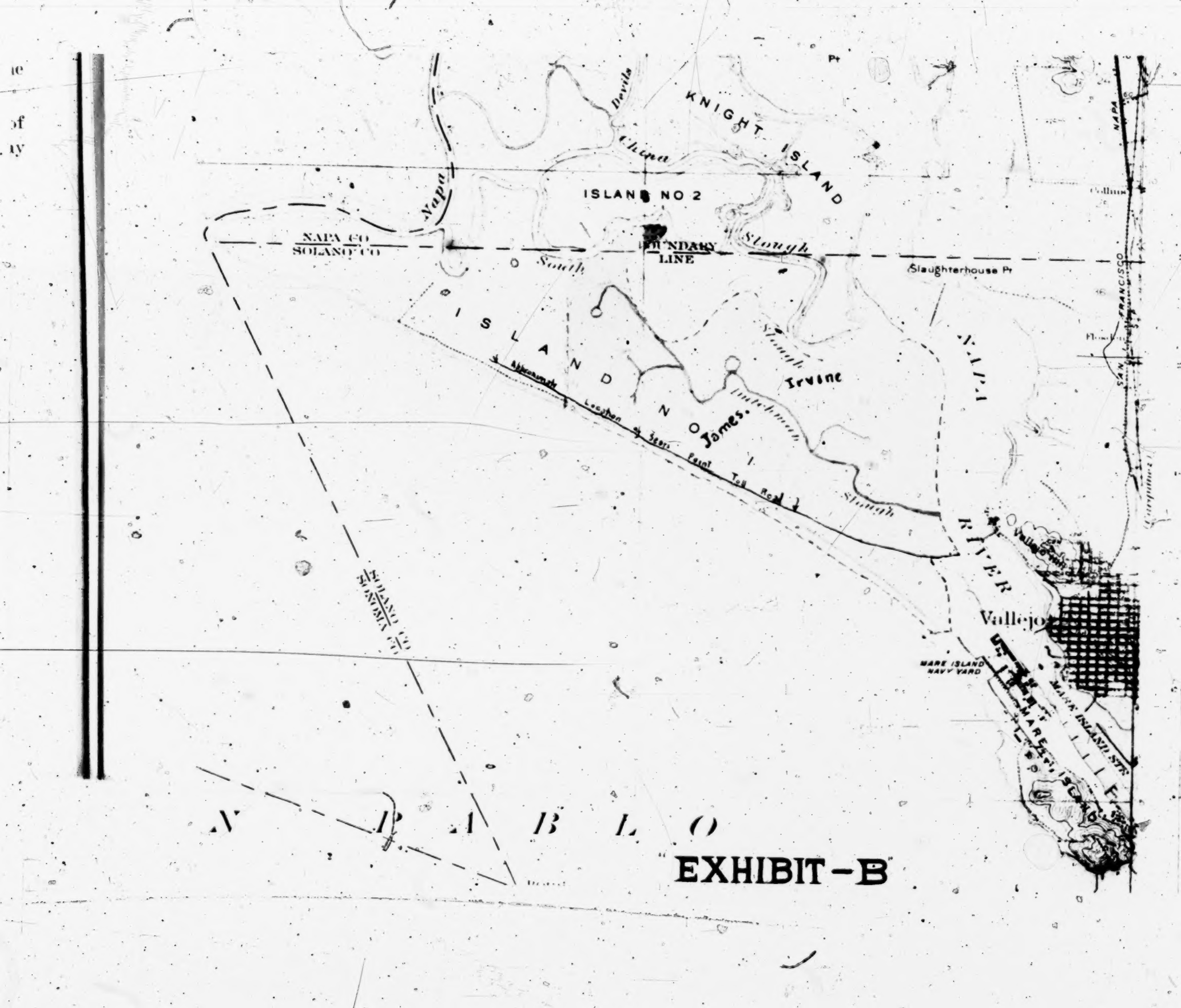
[Printer's Note]: Here follows description of parcel of land with statement of ownership substantially as it appears in Exhibit "A" to the Judgment.

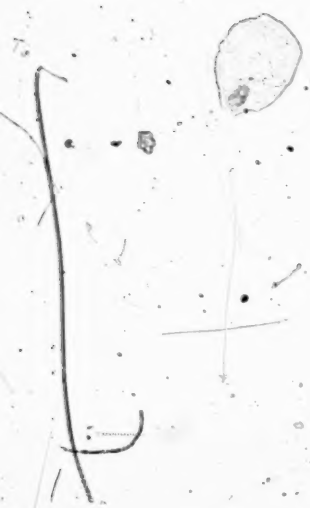
[Endorsed]: Due service and receipt of a copy of the within Answer is hereby admitted this 18th day of March, 1936.

H. H. McPIKE,
U. S. Atty.
ESTHER B. PHILLIPS
Asst. U. S. Atty.
Solicitors for Complainant.

[Endorsed]: Filed March 18, 1936. [124]

Napa
Rainbow Slough
Slough
Coon Island
Good Luck Pt
Devils Creek
KNIGHT ISLAND
Chipps
ISLAND NO 2
Napa
NAPA CO
SOLANO CO
BOUNDARY LINE
South
Slough
Slaughterhouse Pt
NAPA
SAN FRANCISCO
ISLAND NO 1
Irvine
James
Suisun Bay
Pt Chicago
Vallejo
MARE ISLAND NAVY YARD
MARE ISLAND STR
SOLANO CO
SONOMA CO


KNIGHT ISLAND
ISLAND NO 2
Napa
Devils
China
NAPA CO
SOLANO CO
BOUNDARY LINE
Slough
Slaughterhouse Pt
ISLAND NO
James
Irvine
Steamboat
Location of Steamboat Point Toll Road
RIVER
Vallejo
MARE ISLAND NAVY YARD
MARE ISLAND STR
NAPA
SAN FRANCISCO
Pt
Collins
Valley
EXHIBIT-B



[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF DEFENDANT JAMES IRVINE TO THE AMENDED BILL OF COMPLAINT AND TO THE AMENDMENTS THERETO.

Comes now defendant James Irving, and, with leave of [125] court first had and obtained, files the following amendment to his answer to complainant's amended bill of complaint on file herein and the Amendments thereto on file herein (all hereinafter for convenience referred to as the Bill), and admits, denies and alleges as follows, to-wit:

Third Defense

The Established Public Boundary of the Mare Island Navy Yard Reservation.

As a third, separate and distinct defense and answer to the Bill, this defendant alleges as follows:

I.

That the Mare Island Navy Yard Reservation (hereinafter for convenience referred to as said Mare Island Reservation) is a naval reservation of the United States, and the territory thereof is territory of the United States subject to the exclusive jurisdiction, dominion and sovereignty of the United States and not to the jurisdiction, dominion or sovereignty of the State of California. That such exclusive jurisdiction, dominion and sovereignty were acquired by the United States as follows:

On November 6, 1850, and again on February 11, 1853, the President of the United States, by execu-

tive order, reserved Mare Island from sale and for public use as a navy yard and naval depot. In addition, in 1853 the United States purchased the claims of certain private persons to said Mare Island and this purchase was consented to by the State of California by acts of her Legislature adopted April 27, 1852 (Cal. Stats. 1852, p. 149) and May 11, 1854 (Cal. Stats. 1854, p. 161). By [126] the act of the Legislature of the State of California of March 2, 1897 (Cal. Stats. 1897, p. 51) the State of California expressly ceded exclusive jurisdiction to the United States of all lands within said State held, occupied or reserved by the United States for military purposes or defense, which cession included the lands then occupied by the United States as said Mare Island Reservation, said act requiring that a sufficient description of such lands be filed in the proper office of record in the counties in which the same were situated, and the United States, pursuant to said act, filed and recorded in the office of the County Recorder of the County of Solano (that being the county within the exterior boundaries of which said Mare Island Reservation is situate) a sufficient description of said Mare Island Reservation, said filing being a map showing the boundaries of said Mare Island Reservation, which map was recorded November 10, 1913, in Book 5 of Maps, page 4, Solano County Records.

II.

That the lands described in Subdivision II of the Bill are the lands embraced within that certain

state segregation survey known as Swamp and Overflowed Land Survey No. 569 (hereinafter for convenience referred to as Survey 569).

That beginning in the year 1890 and consistently ever since (except for the filing of this action on April 22, 1930) the United States has recognized that the northwesterly boundary of said Mare Island Reservation did not extend beyond or to the north of the southeasterly boundary of said Survey 569. Said southeasterly boundary of said Survey 569 has been established, recognized and acquiesced in by the United States as [127] the line beyond which said Mare Island Reservation did not extend, and at no time since 1890 has the United States asserted or attempted to assert or exercise jurisdiction, dominion or sovereignty over any of the lands within said Survey 569 as a part of said Mare Island Reservation. On the contrary, ever since 1890 the State of California has, with the knowledge of and without objection by the United States, consistently asserted and exercised its jurisdiction over all of said lands as lands subject to its jurisdiction, dominion and sovereignty and as lands which were not within or a part of said Mare Island Reservation.

That said southeasterly boundary line of said Survey 569 became the established, recognized and accepted public boundary line limiting the extent of said Mare Island Reservation in the manner next hereinafter set forth.

III.

Mare Island is now and at all times has been a body of high land rising out of the waters of San Pablo Bay, being surrounded, except at its extreme northwesterly end, by the waters of said Bay and of Carquinez and Mare Island Straits. Said Island extends lengthwise in a northwesterly and southeasterly direction a total distance of about 2½ miles. At its northwesterly end it was long prior and long subsequently to 1850 connected by a narrow neck of marsh, in places less than 600 feet wide, with a great area of swamp and overflowed lands extending to the north and west seven or eight miles. Prior to 1850 and for many years thereafter said narrow neck of marsh was submerged and completely covered with water at least at [128] times of extreme high tide. The said great area of swamp and overflowed lands to the north and west was also, at extreme high tide, largely covered with water, and except for a sand ridge along the shore of San Pablo Bay washed up by the waters of said Bay, was swampy and marshy and in good part subject to overflow and was entirely unfit for cultivation or use of any kind without reclamation.

That most of said swamp and overflowed lands to the north and west lay within the boundaries of said Survey 569, which was surveyed on behalf of the State of California in June of 1869. The swamp and overflowed lands lying between the southeasterly boundary of said Survey 569 and said Mare Island, including said narrow neck of marsh, were

embraced within that certain state segregation survey known as Swamp and Overflowed Land Survey No. 34, which survey is hereinafter for convenience referred to as Survey 34.

IV.

That in the year 1853 the United States took possession of Mare Island and commenced the establishment of a navy yard and navy depot thereon and has ever since occupied said Island as a reservation for naval purposes, with the consent of the State of California as hereinbefore set forth, and has exercised exclusive jurisdiction, dominion and authority over said Island and said naval reservation.

V.

That on September 28, 1850, the United States, by Act of Congress known as the Swamp Land Act, granted [129] to the State of California all unsold swamp and overflowed lands unfit for cultivation lying within said State. All of the lands within said Survey 569 were lands of the character described in said Swamp Land Act, and pursuant to said Act passed to the State of California by said grant.

On or about the 7th day of April, 1874, the State of California having theretofore and in the year 1869 sold the lands in Survey 569 to one Jacob C. Hinckley issued its patents for said lands to one John W. Pearson as assignee of said Hinckley, from whom this defendant acquired by mesne con-

veyances those portions of said Survey 569 owned by him and more particularly described in "Exhibit A" to the Answer of this defendant.

VI.

When the United States first took possession of said Mare Island as a naval reservation as aforesaid, it did not occupy any of the lands within said Survey 34 nor any of the lands within said Survey 569, although almost from the outset it used nearby portions of Survey 34 as a dumping area and also as a place from which it procured sand for use at said Navy Yard and on a few occasions placed targets on said Survey 34 for use in target practice. The United States has never at any time used any portion of the lands lying within said Survey 569 for any purpose whatsoever in connection with said Mare Island Reservation.

Prior to September 13, 1883, one John Irwin, as the then commandant of Mare Island Navy Yard, claimed and asserted the [130] right to possession of said Survey 569 on behalf of the United States and excluded therefrom the predecessors in interest of this defendant. On September 13, 1883, said predecessors in interest of this defendant brought an action in ejectment against said John Irwin for the recovery of said Survey 569, all as more particularly set forth in subparagraph (a) of Subdivision II of the first defense in the Answer of this defendant. As stated in subparagraph (a), said action was defended at the expense and on behalf

of the United States and upon the ground that the lands of which said commandant had taken possession were a part of Mare Island and were owned by the United States as a part of said Mare Island Reservation. On July 8, 1886, the United States Circuit Court, Ninth Judicial District for the District of California, gave judgment in said action in favor of the plaintiffs therein and against said commandant, expressly finding and holding that the lands embraced in said Survey 569 were not a part of Mare Island and were not owned by the United States as a part of said Mare Island Reservation or otherwise, but, on the contrary, the plaintiffs in said action were the owners thereof as the successors in interest of the State of California under the said Swamp Land Grant. The defendant in said action, at the expense and on behalf of the United States, prosecuted an appeal from said judgment to the Supreme Court of the United States, and on February 3, 1890, said judgment was affirmed by said court. Upon the affirmance of said judgment the plaintiffs in said action went into possession of said land and from and after that time until the commencement of this action said judgment was and has been accepted by the United States, and by the State of California, and by all persons interested therein as conclusively establishing that all of the lands in said Survey 569 were not a [131] part of Mare Island and were not owned by the United States.

Since the affirmance of said judgment the southeasterly boundary line of said Survey 569 has consistently been recognized by the United States as the public boundary line between said Mare Island Reservation and the territory subject to the jurisdiction, dominion and sovereignty of the State of California, and the State of California has ever since the affirmance of said judgment consistently exercised jurisdiction, dominion and sovereignty over all of the lands lying to the north and west of said boundary line, including all of the lands embraced in said Survey 569, all as evidenced by the following acts among others:

(a) The State of California has consistently taxed the real and personal property in said Survey 569; has included the lands therein in election districts and voting precincts; has exercised through its courts civil and criminal jurisdiction within said Survey 569; and has, through its subordinate instrumentalities, granted franchises for toll roads across said lands. In addition thereto, the predecessors in interest of this defendant have reclaimed large portions of the lands within said Survey 569, and for more than thirty years prior to the filing of this action have been in the undisturbed possession and occupancy of said lands and have cultivated and lived on the same.

The United States, on the other hand, has not attempted to take possession of any of the lands to the north and west of said boundary line, either as a part of said Mare Island Reservation or other-

wise, nor has it attempted to exercise jurisdiction, dominion and sovereignty over any of said lands, as it has [132] consistently done with respect to the lands within said Mare Island Reservation, but has permitted, without objection, the reclamation and cultivation of the lands to the north and west of said line by this defendant and his predecessors in interest and the making of improvements thereon and the construction and use of toll roads, pipe lines and electric power lines across the same.

(b) In the year 1897 the then commandant of Mare Island Navy Yard and the then predecessors in interest of this defendant jointly caused a survey to be made for the purpose of determining the location of the southeasterly boundary line of said Survey 569 as the public boundary line beyond which the said Mare Island Reservation did not extend, and upon the determination of such boundary line the then predecessors in interest of this defendant, to the knowledge and without objection by the United States, constructed a levee on said line, as so determined, for the purpose of reclaiming the land to the north thereof. Subsequently it was discovered that the boundary line as so determined was erroneous and that the true southeasterly boundary line of said Survey 569 lay to the northwest of said line as theretofore established; whereupon, said boundary line was correctly located and thereafter and in December, 1914, the United States, with the acquiescence of the predecessors in interest of this defendant, erected and has ever since main-

tained a substantial post and wire fence along the true southeasterly boundary line of said Survey 569 as a boundary fence marking and indicating the line beyond which said Mare Island Reservation did not extend. [133]

(c) That as hereinbefore stated, on November 10, 1913, pursuant to said act of the Legislature of the State of California of 1897 ceding to the United States the exclusive jurisdiction over all lands within the State of California held, occupied or reserved by the United States for military purposes or defense, the United States filed and recorded in the office of the County Recorder of the County of Solano a map showing the boundaries of said Mare Island Reservation and upon said map the northwesterly boundary line of said Reservation is shown as the southeasterly boundary line of said Survey 569, as correctly located as in paragraph (b) heretofore stated.

(d) On June 5, 1896, the United States patented to the State of California all those portions of said Survey 569 lying in Township 3 North, Range 5 West, M. D. B. & M., and on February 7, 1910, the United States patented to the State of California all those portions of Survey 569 lying in Township 4 North, Range 5 West, M. D. B. & M., said patents being the patents referred to in the Bill herein as Swamp Land Patents Nos. 72 and 152 respectively. The lands so patented are the portions of said Sur-

vey 569 most remote from said Mare Island, the nearest point of the same being approximately five miles from Mare Island.

Thereafter application was made for the issuance of a patent to the State of California of the lands embraced within said Survey 569 lying between the lands patented as above set forth and the southeasterly boundary line of said Survey 569, said lands being those lying within Township 3 and 4 North, Range 4 West, M. D. B. & M. The Navy Department having theretofore indicated that the United States claimed said lands [134] as a part of said Mare Island Reservation, the Secretary of the Interior under date of October 18, 1912, addressed a letter to the Secretary of the Navy requesting of him such data as might be in the latter's possession relative to the limits of the lands embraced in Mare Island to the end that the matter of segregating the swamp and overflowed lands from said Mare Island might be considered. Under date of February 1, 1913, the Acting Secretary of the Navy addressed a reply to the Secretary of the Interior calling the latter's attention to the judgment in the action of ejectment against John Irwin hereinbefore mentioned, which held that the lands embraced within said Survey 569 were not a part of Mare Island and with said letter said Acting Secretary of the Navy forwarded to the Secretary of the Interior a plan showing the then limits of said Mare Island and showing that the northwesterly boundary line of said Mare Island Reservation did not extend beyond or to the north or west of

said southeasterly boundary line of said Survey 569.

Thereafter the Department of the Interior directed that appropriate surveys be made of said Townships 3 and 4 North, Range 4 West, M. D. B. & M., for the purpose of segregating the swamp and overflowed lands therein granted to the State of California by said Swamp Land Act and directed that such survey should be limited to the lands in said townships lying to the north and west of said southeasterly boundary line of said Survey 569 as established by the fence erected upon said boundary line by the United States as hereinbefore set forth. Such surveys were made and approved, and the Secretary of the Navy having expressed the view in a letter to [135] the Secretary of the Interior, under date of June 4, 1923, that all of the lands lying within said Survey 569 had been lost to the United States by reason of the judgment in said ejectment suit against John Irwin hereinbefore referred to, the Department of the Interior ordered all of the lands embraced within said Survey 569 lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. to be patented to the State of California, and pursuant to said instructions said lands were patented to the State of California by patent dated April 26, 1924, and numbered 937055.

W. H. SPAULDING
STONEY, ROULEAU, STONEY & PALMER
Attorneys for Defendant, James Irvine. [136]

United States of America,
Northern District of California,
City and County of San Francisco—ss.

Thomas E. Palmer, being first duly sworn, deposes and says:

That he is one of the attorneys for James Irvine, a defendant named in the above entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true; that this pleading is verified by said attorney for the reason that said defendant is absent from the county where the attorneys for said defendant have their office.

THOMAS E. PALMER

Subscribed and sworn to before me this 25th day of May, 1937.

[Seal] EMI EGGERS DEL BONO
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed May 25, 1937. [137]

[Title of District Court and Cause.]

SECOND AMENDMENT TO ANSWER OF DEFENDANT JAMES IRVINE TO THE AMENDED BILL OF COMPLAINT AND TO THE AMENDMENTS THERETO

Comes now defendant James Irvine and with leave of Court first had and obtained files the fol-

lowing amendment to his answer to complainant's amended Bill of Complaint and the amendments thereto, all hereinafter for convenience referred to as the Bill, and admits, denies and alleges as follows, to-wit:

Fourth Defense
Equitable Estoppel

For a fourth, separate and distinct defense and answer to the Bill this defendant alleges as follows:

I.

Mare Island, referred to in the Bill herein, is and at all times has been a body of high land rising out of the waters of San Pablo Bay and surrounded, except at its extreme northwesterly end, by the waters of said Bay and of Carquinez and Mare Island Straits. It extends lengthwise in a northwesterly and southeasterly direction a total distance of about two and one-half miles and contains some 900 acres, more or less. In 1850 and prior thereto and for many years thereafter it was connected by a narrow neck of marsh less than 600 feet wide with a great area of swamp and overflowed lands extending to [138] the north and west seven or eight miles and containing some 7,000 acres, more or less. In 1850 and prior thereto and for many years thereafter said narrow neck of marsh land was submerged and completely covered with water at least at times of extreme high tide. The said area of swamp and overflowed lands to the north and west was also at extreme high tide

largely covered with water and, except for a sand ridge along the shore of San Pablo Bay washed up by the waters of said Bay, was swampy and marshy and subject to overflow and entirely unfit for cultivation or use of any kind without reclamation.

That most of said swamp and overflowed lands to the north and west lie within the boundaries of that certain State segregation survey known as Swamp and Overflow Land Survey No. 569, made on behalf of the State of California in June of 1869. The lands included within said survey are hereinafter referred to as Survey 569. The lands lying between the southeasterly boundary of said Survey 569 and Mare Island, including said narrow neck of marsh hereinbefore mentioned, are embraced within that certain State segregation survey known as Swamp and Overflow Land Survey No. 34, which lands are hereinafter referred to as Survey 34.

II.

On September 28, 1850, the United States, by Act of Congress known as the Swamp Land Act, granted to the State of California all unsold swamp and overflowed lands unfit for cultivation lying within said State. All of the lands within said Survey 569 were of the character of the lands so granted by said Act.

On or about the 7th day of April, 1874, the State of California, having heretofore and in the year 1869 sold the [139] lands in Survey 569 to one

Jacob C. Hinckley, issued its patents for said land to one John W. Pearson, as assignee of said Hinckley. Thereafter these defendants by mesne conveyances acquired from said Pearson those portions of said Survey 569 owned by them and more particularly described in Exhibit A to their answer.

III.

In 1853 certain private parties, to-wit: George W. P. Bissell, William H. Aspinwall and Mary S. McArthur, claimed to be the owners of Mare Island as the successors in interest of one Victor Castro, to whom they asserted the Government of Mexico had made a grant of said Island in the year 1841.

In said year 1858 the United States purchased from said Bissell, Aspinwall and McArthur all of their right, title and interest in and to Mare Island and thereupon, as alleged in paragraphs I and IV of the third defense of these defendants as set forth in the amendment heretofore made to their answer, took possession of Mare Island and established thereon and has ever since maintained a navy station or naval yard.

When the United States first took possession of said Mare Island as aforesaid, it did not occupy any part either of said Survey 34 or said Survey 569, and while thereafter it occupied and used portions of Survey 34 adjoining Mare Island, it has never at any time used any portion of said Survey 569 and, except as hereinafter set forth in subdivision V hereof, has not had possession or attempted to take possession of any portion of said survey.

IV.

On or about the 3rd day of January, 1883, one D. W. Bouldin and one A. P. Moore brought an action in ejectment against the then [140] commandant of the Mare Island Navy Yard, one Thomas S. Phelps, seeking to recover possession of Mare Island, claiming that they were the owners of said Island by virtue of the asserted grant of the same hereinbefore mentioned by the Mexican Government to Victor Castro, asserting in that behalf that they and not said Bissell, Aspinwall and McArthur were the successors in interest of said Castro. As alleged in subparagraph (a) of subdivision II of the first defense in the answer of this defendant, said action was defended by and at the expense of the United States, which set up by way of defense to said action that the purported grant to said Victor Castro, hereinbefore mentioned, under which said Bissell, Aspinwall and McArthur had claimed title to said Island and under which the plaintiffs in said ejectment suit, said Bouldin and Moore, were then claiming title, was in fact fraudulent and void and that the instrument purporting to constitute and evidence said grant had in fact not been made until 1850 and after the Mexican sovereignty of California had ceased. Upon the trial of said action said defense was sustained and it was held that said purported grant to Victor Castro was in fact fraudulent and void and that the instrument purporting to constitute and evidence said grant had not been made until 1850.

V.

Shortly prior to September 13, 1883, the then commandant of Mare Island Navy Yard, one John Irwin, asserted the right as such commandant to the possession of said Survey 569 as being property of the United States and excluded therefrom the predecessors in interest of this defendant. Thereupon and on September 13, 1883, said predecessors in interest of this defendant brought an action in ejectment against said Irwin for the recovery of said [141] Survey 569, all as more particularly set forth in subparagraph (b) of subdivision II of the first defense in the answer of this defendant. As there stated, said action was defended at the expense and on behalf of the United States and upon the ground that the lands of which said commandant had taken possession were a part of Mare Island and were owned by the United States. On July 8, 1886, the United States Circuit Court, Ninth Judicial District for the District of California, gave judgment in said action in favor of the plaintiffs therein and against said commandant, expressly finding and holding that the lands embraced in said Survey 569 were not a part of Mare Island and were not owned by the United States, but on the contrary the plaintiffs in said action were the owners thereof as the successors in interest of the State of California, as the grantee of the United States under the grant made by said Swamp Land Act. The United States, in the name of said Irwin but at its own expense and on its own behalf, prose-

cuted an appeal from said judgment to the Supreme Court of the United States and on February 3, 1890 said judgment was affirmed by said court.

VI.

From the affirmance of said judgment until the commencement of this action said judgment was and has been accepted by the United States and by the State of California and by all persons interested in said lands as conclusively establishing that none of said Survey 569 was owned by the United States, and until the commencement of this action on the 22nd day of April, 1930, the United States asserted no claim to any right or interest in said lands. [142]

VII.

Following the affirmance of said judgment one L. E. Cross purchased for a valuable consideration the lands included in said Survey 569 and thereupon took possession of the same and in the year 1896 commenced the reclamation of the portion of said Survey 569 nearest Mare Island by the construction of extensive levees and drainage works. Preliminary to the construction of said levees and drainage works the then commandant of the Mare Island Navy Yard and said Cross jointly caused a survey to be made for the purpose of determining the southeasterly boundary line of said Survey 569 in order that said Cross might construct a levee along said line and such levee was thereupon constructed by said Cross. Said levees and drainage

works were completed by said Cross on or before the year 1899 at an expense of many thousands of dollars and said Cross thereupon built roads and erected farm houses and other farm buildings on said Survey and commenced the farming and cultivation of a large part of the same, and such farming and cultivation by said Cross and his successors in interest has continued until the present time.

That portions of said Survey not cultivated were, following the affirmance of said judgment, improved at very considerable expense by certain defendants in this action or their predecessors in interest as wild duck preserves by the construction of levees, the making of ponds and the construction of roads and buildings.

That in 1926 and subsequent to the issuance by the United States of patents to the State of California for all of said Survey 569, the defendant Sears Point Toll Road Co. constructed a public toll road across said Survey 569 at an expense likewise [143] in excess of many thousands of dollars.

That ever since the predecessors in interest of said defendants took possession of said lands following the affirmance of said judgment against said Irwin, they and their successors in interest have had the open, visible, exclusive and undisturbed possession of said Survey 569.

VIII.

Following the affirmance on February 3, 1890 of said judgment against said Irwin, the United

States on June 5, 1896 patented to the State of California all those portions of said Survey 569 lying in Township 3 North, Range 5 West, M. D. B. & M., and on February 7, 1910 patented to the State of California all those portions of Survey 569 lying in Township 4 North, Range 5 West, M. D. B. & M., said patents being the patents referred to in the Bill herein as Swamp Land Patents Nos. 72 and 152, respectively. The lands so patented are the portions of said Survey 569 most remote from said Mare Island, the nearest point of the same being approximately five miles therefrom.

Thereafter application was made for the issuance of a patent to the State of California for the balance of said Survey 569, to-wit: those portions of said Survey lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. Upon said application being made, the Secretary of the Interior, under date of October 18, 1912, addressed a letter to the Secretary of the Navy requesting of him such data as might be in the latter's possession relative to the limits of the lands embraced in Mare Island, to the end that the matter of segregating from Mare Island swamp and overflowed lands granted to the State of California might be considered. Under date of February 1, 1913, the [144] Acting Secretary of the Navy replied by letter to the Secretary of the Interior calling attention to the judgment in the action of ejectment against John Irwin hereinbefore mentioned, holding that the lands embraced within said Survey 569 were not a part of

Mare Island, and with said letter forwarded to the Secretary of the Interior a map or plat showing the limits of Mare Island and showing as the northwesterly boundary line thereof the southeasterly boundary line of said Survey 569.

Thereafter and on November 10, 1913, pursuant to an Act of the Legislature of the State of California passed in 1897, ceding to the United States the exclusive jurisdiction of all lands within the State of California held, occupied or reserved by the United States for military purposes or defense, the United States filed and recorded in the office of the County Recorder of the County of Solano a map showing the boundaries of said Mare Island Reservation and upon said map the northwesterly boundary line of said Reservation is shown as the southeasterly boundary line of said Survey 569.

Thereafter the Department of the Interior directed that appropriate surveys be made of said Townships 3 and 4 North, Range 4 West, M. D. B. & M., for the purpose of segregating the swamp and overflowed lands therein granted to the State of California by said Swamp Land Act, and directed that such surveys should be limited to the lands in said townships lying to the north and west of said southeasterly boundary line of said Survey 569. Such surveys were made and approved and the Secretary of the Navy having been again consulted by the Secretary of the Interior as to lands claimed by the United States and being advised by the latter by letter under date of June 4, 1923 that all of the lands lying within said Survey 569 had

been lost to the [145] United States by reason of the judgment in said ejectment action, the Secretary of the Interior ordered all of the lands within said Survey 569 not theretofore patented to the State, to-wit: the lands in said Survey lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M., to be patented to the State of California, and pursuant to said order said lands were by the United States patented to the State of California by the patent referred to in the Bill herein dated April 26, 1924 and numbered 937055.

IX.

This defendant prior to the commencement of this action purchased for valuable consideration from the successors in interest of the State of California the land alleged in the answer of this defendant to be owned by him, doing so subsequently to the issuance by the United States of its patent to the State of California for said land and in reliance upon said patent.

X.

That by reason of the foregoing facts the United States is estopped in equity and good conscience from asserting as against this defendant that any part of said Survey 569 is a part of Mare Island or that it has any right or title thereto.

W. H. SPAULDING,
STONEY, ROULEAU,
STONEY & PALMER,
Solicitors for Answering Defendant.

[Endorsed]: Filed Jun. 15, 1937. [146]

[Title of District Court and Cause.]

ORDER FOR SUBSTITUTION OF META S. HEALY AS PARTY DEFENDANT IN THE PLACE AND STEAD OF W. H. HEALY, DECEASED.

The Complainant's Petition for Substitution of Meta S. Healy, as party defendant in the place and stead of W. H. Healy, Deceased, coming regularly on for hearing, the Complainant appearing by its Attorneys, H. H. McPike, United States Attorney for the Northern District of California, and Esther B. Phillips, Assistant United States Attorney, and Meta S. Healy appearing by her Attorneys, Messrs. Stoney, Rouleau, Stoney & Palmer, and, it appearing to the Court that the defendant, W. H. Healy, died on August 11, 1931, and that thereaffer proceedings were duly had in the matter of his estate in the Superior Court of the State of California, in and for the City and County of San Francisco, and that on July 28, 1932, a final decree of distribution was rendered in said estate by said Superior Court, and that by said final decree of distribution, all the right, title and interest claimed by said W. H. Healy, deceased, in the lands described [147] in Complainant's Bill of Complaint was distributed to Meta S. Healy as residuary legatee, and it

Further appearing that there is no opposition to said Petition for Substitution,

It is hereby Ordered, Adjudged and Decreed that Meta S. Healy be substituted as party defendant in the place and stead of W. H. Healy, deceased.

Dated: April 20, 1936.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Apr. 20, 1936. [148]

[Title of District Court and Cause.]

ORDER DISMISSING CAUSE AS TO DEFENDANTS RUSS INVESTMENT COMPANY, HENRY A. KENDAL, JOSEPH DUBEAULT, WILFRID DUBEAULT AND CHARLES J. MONAHAN AND AS TO CERTAIN LANDS.

The parties having so stipulated, and good cause appearing therefor:

It is hereby ordered, adjudged and decreed that the [149] above-entitled cause be and the same is hereby dismissed, with prejudice, as to defendants Russ Investment Company (sued herein as Russ Investment Co.), Henry A. Kendal (sued herein as Henry A. Kendall), Joseph Dubeault, Wilfrid Dubeault (sued herein as Wilfred Dubeault) and Charles J. Monahan.

It is further ordered, adjudged and decreed that the above-entitled cause be and the same is hereby dismissed, with prejudice, as to all of the lands described in the Amended Bill of Complaint, lying to the north and east of South Slough, also known as Navy Yard Slough, owned or claimed by the forgoing defendants or any of them, including in

particular (but by this particular mention not limiting the breadth or scope of the foregoing description), the following described parcels, to wit:

(1) All that certain piece or parcel of land situate, lying and being in part in the County of Napa and in part in the County of Solano, State of California, described as follows:

Bounded on the north by the north line of Sections 32, 33 and 34 of Township 4 North, Range 4 West, Mt. Diablo Base and Meridian; bounded on the east by Napa Straits (also known as Napa River); and bounded on the south and west by the center line of China Slough from the North line of said Section 32 to its confluence with Navy Yard Slough (also called South Slough), and thence by the center line of said Navy Yard Slough to said Napa Straits; said parcel of land being a portion of the land included in Swamp and Overflowed Land Survey No. 569, Solano County Series, and lying in Sections 32, 33 and 34 in Township 4 North, Range 4 West, and in Sections 3 and 4 West, Mount Diablo Base and Meridian.

(2) All that certain piece or parcel of land situate, lying and being in part in the County of Napa and in part in the County of Solano, State of California, more particularly described as follows:

A tract of land bounded on the north by the center line of China Slough and by lands conveyed to David T. Hanbury by A. L. Scott and

Lillian R. Scott, his wife, by deed dated December 3, 1904, and recorded in the office of the County Recorder of said County of Napa, in Book 80 of Deeds, at page 237; on the east by said center line of said China Slough and on [150] the South and West by the center line of South Slough (also called Navy Yard Slough; containing 600 acres more or less and being situated in Sections 31, 32 and 33, Township 4 North, Range 4 West, and Section 5, Township 3 North, Range 4 West, Mount Diablo Base and Meridian, and being a portion of the lands embraced within Swamp and Overflowed Lands Survey No. 569, Solano County Series, patented by the State of California by patent dated April 7, 1874, and recorded May 1, 1874, in the office of the County Recorder of said County of Solano, in Book 3 of Patents, page 301.

Done in open Court this 9 day of April, 1937.

A. F. ST. SURE,
United States District Judge.

Approved as to form
H. H. McPIKE,
United States Attorney.
ESTHER B. PHILLIPS,
Ass't U. S. Atty.

[Endorsed]: Filed Apr. 9, 1937. [151]

[Title of District Court and Cause.]

ORDER DISMISSING CAUSE AS TO DEFENDANT META S. HEALY AND AS TO CERTAIN LAND.

The parties having so stipulated, and good cause appearing therefor, it is hereby ordered that the above-entitled cause be and the same is hereby dismissed with prejudice as to Meta S. Healy.

It is further ordered that the above-entitled cause be and the same is hereby dismissed with prejudice as to the following described parcel of land:

Commencing at a point on the east bank of Napa Slough which is also the beginning point of the description of Swamp and Overflowed Land Survey No. 115, and which bears west 16.00 chains from the ¼ corner in the south line of Section 25, Township 4 North, Range 5, West, M. D. M., in Napa County, California; running thence with the meander line of said Swamp and Overflowed Land Survey No. 115, following the said east bank of said Napa Slough on the same courses and distances as those given in said Swamp and Overflowed Land Survey No. 115, as follows: North 40° East 13.00 chains; North 0° 30′ East 10.50 chains; north 19° 15′ West 27.75 chains; north 15° 15′ West 51.30 chains to the mouth of a slough running through Little Island and also to the north or exterior line of a borrow canal from which a levee has been thrown up north of

the said Canal; thence following the north or exterior line of the said canal, so as to [152] include the canal in the property herein described, easterly and southeasterly, 110 chains, more or less, to the north bank of China Slough; thence following the north bank of said China Slough and the north bank of South Slough in a southwesterly and westerly direction 53 chains, more or less, to the south turn in South Slough; thence following the west bank of said South Slough in a southerly direction 76 chains, more or less, to the north turn of said South Slough at the extreme end of Little Island,—thence following the east bank of said South Slough, in a northerly direction 30 chains more or less, to the point of commencement.

Being a portion of Swamp and Overflowed Land Survey No. 115 and a portion of Swamp and Overflowed Land Survey No. 569, and containing 330 acres.

Dated: May 26, 1937.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed May 26, 1937. [153]

[Title of District Court and Cause.]

STIPULATION AS TO CLAIM OF DEFENDANT PACIFIC GAS AND ELECTRIC COMPANY

It is hereby stipulated and agreed that defendant Pacific Gas and Electric Company shall be deemed to have filed an answer to the Amended Bill of Complaint and amendments thereto, claiming ownership of a right of way and easement for transmission line purposes over the lands claimed by defendants James Irvine, Mary W. Stewart, Bay Land Company, Field and Tule Land Company and West End Land Company under and by virtue of a right of way deed from Lester E. Cross to Pacific Gas and Electric Company dated May 8, 1911 and recorded in the office of the County Recorder of the County of Napa, State of California, on May 15, 1911, in Volume 100 of Deeds at page 286, and also recorded in the office of the County Recorder of the County of Solano, State of California, on May 26, 1911 in Liber 192 of Deeds at page 53.

It is further stipulated and agreed that ever since 1914 defendant Pacific Gas and Electric Company has been in the actual, open, notorious and adverse possession and use of said right of way and easement, having theretofore constructed an electric transmission tower line thereon, and that whatever title or interest was granted to the State of California by the [154] Swamp Land Act of 1850 in or to the lands covered by said right of way

and easement was, on May 8, 1911, vested in said Lester E. Cross, and that defendant Pacific Gas and Electric Company is now the owner of the right of way and easement intended to be granted by said right of way deed of May 8, 1911 insofar as the State of California or any of its successors in interest owned said right of way and easement or was entitled to grant or convey the same; it being expressly understood, however, that complainant does not concede but expressly denies that either the State of California or any of its successors in interest ever had or now has any title or interest in or to said right of way and easement or in or to the lands covered thereby.

Dated August 29, 1939.

FRANK J. HENNESSY,
United States Attorney.
ROBERT L. McWILLIAMS,
Assistant United States Attorney,
ESTHER B. PHILLIPS,
Assistant United States Attorney,
Attorneys for Complainant.

THOS. J. STRAUB,
J. C. WOOD,
Attorneys for defendant Pacific Gas and Electric Company.

STONEY, ROULEAU,
STONEY & PALMER,
W. H. SPAULDING,
Attorneys for defendant
James Irvine.
HENRY E. MONROE,
J. M. MANNON,
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
Attorneys for Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company and West End Land Company.

It is so ordered.

A. F. ST. SURE,
U. S. District Judge.

[Endorsed]: Filed Aug. 30, 1939. [155]

[Title of District Court and Cause.]

STIPULATION FOR VIEW OF PREMISES

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the Court may, at its convenience and without the presence of counsel or any representative of any of the parties, view the lands and premises which are the subject of the above entitled action.

San Francisco, California, August 15, 1939.

FRANK J. HENNESSY,
By E. B. P.,
United States Attorney.
ESTHER B. PHILLIPS,
Assistant United States Attorney,
Attorneys for Plaintiff.

HENRY E. MONROE,
J. M. MANNON, JR.,
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
Attorneys for Defendants Mary W. [156] Stewart, Sears Point Toll Road Co., a corporation, American Trust Company, a corporation, Bay Land Company, a corporation, Field and Tule Land Company, a corporation, and West End Land Company, a corporation.

W. H. SPAULDING,
STONEY, ROULEAU, STONEY & PALMER,
Attorneys for defendant James Irvine.

[Endorsed]: Filed Aug. 16, 1939. [157]

[Title of District Court and Cause.]

Frank J. Hennessy
United States Attorney

Esther B. Phillips
Assistant United States Attorney
Post Office Building
San Francisco, California;

John L. Wheeler
Special Attorney, Department of Justice

Oscar Provost
Special Assistant to the Attorney General

Philip Buettner
Attorney, Office of Judge Advocate General of the Navy
Washington, D. C.;
Attorneys for Complainant.

Henry E. Monroe
Warren Olney, Jr.
J. M. Mannon, Jr.
A. Crawford Greene
Robert L. Lipman
Warren Olney III
San Francisco, California
Solicitors for Defendants Mary W. Stewart, Sears Point Toll Road Company, Bay Land Company, Field and Tule Land Company and West End Land Company.

W. H. Spaulding
Stoney, Rouleau, Stoney & Palmer
San Francisco, California
Solicitors for Defendant James Irvine.

McCutchen, Olney, Mannon & Greene
San Francisco, California
Of Counsel. [158]

OPINION

St. Sure, District Judge:

This is a suit brought by the Government to cancel three patents issued to the State of California, and to quiet title to 7,413.48 acres of land claimed to be a part of Mare Island in San Francisco Bay.

"The lands in question are in the area acquired as a result of the Mexican War by the Treaty of Guadalupe Hidalgo, July 4, 1848, 9 Stat. 922, which guaranteed the property rights of Mexicans in the annexed territory. The United States claims under deed to it in 1853 by Bissell and Aspinwall and another, who derived their title under grant of May 20, 1841, by Alvarado, Mexican Governor of California, to Castro, a Mexican citizen, of the island La Yegua (Mare Island) 'in all its extent.'" Defendants claim under three patents issued by California in 1874, in 1896, and in 1910 respectively, "purporting to convey the land in question as a part of the swamp or overflowed lands granted to the state by the Swamp Lands Act of Congress,

Sept. 28, 1850, c. 84, 9 Stat. 519," hereinafter called the Swamp Lands Act. The quoted language is from United States v. O'Donnell, 303 U. S. 501, 504, showing a common source of title beginning with the Treaty of Guadalupe Hidalgo to lands involved in the O'Donnell case and those in suit here, but there is no other pertinent similarity between the cases.

The lands in the O'Donnell case were within swamp and overflowed land survey No. 34 containing 164.55 acres, which this court found the United States was the owner of and ever since 1853 had occupied [159] for military purposes in connection with a naval station and Navy Yard; that the possession of the United States had at all times been actual, open, adverse, and exclusive; that the value of the buildings, structures, and utilities placed upon the land by the Government exceeded $1,250,000.

In the O'Donnell case the defendants "specifically challenged the existence and validity of the Castro grant, the validity of the decrees of confirmation of the title of Bissell and Aspinwall, and any prescriptive title of the United States. * * * The trial court made findings of fact and reached conclusions of law in favor of the United States on all these issues. Upon appeal, the Court of Appeals for the Ninth Circuit reversed and decreed 'that the United States has no title to the patented lands in suit, and that the title is in and quieted in' respondents. 91 F. (2) 14." United States v. O'Donnell, supra. The

Supreme Court reversed the Circuit Court of Appeals, thereby finally settling the question as to the validity of the Castro grant and establishing the title of the United States to the lands in survey 34.

The lands in the present case are within swamp land survey No. 569 containing, as we have seen, upwards of seven thousand acres northwest of the Island.

In its complaint the Government alleges that the United States "is the owner of and has since the year 1853, occupied as part of the Mare Island Navy Yard Reservation for public, to-wit: military and naval purposes, and has been in possession" of the lands in controversy. Having in the O'Donnell case quieted title [160] to the lands within survey 34, the Government now claims that the adjoining lands in survey 569 are a physical part of the "Mare Island granted by the Mexican Government to Castro, purchased by the United States from Bissell and Aspinwall, assignees of Castro and set apart for a naval reservation by Executive Order of the President of the United States."(1)

To sustain its case, the Government relies upon the Castro grant, the decree of the Board of Land Commissioners in Bissell and Aspinwall v. United States, 30 Fed. Cases page 1232, and deed from Bissell and Aspinwall to the United States, the Freeman survey made in conformity with the Act of March 3, 1851, and said Executive Order. The Gov-

(1) Brief for the United States, page 4.

ernment contends that the Freeman survey "is conclusive in determining the delineation of Mare Island in the instant case." In addition to this survey, many maps, plats, drawings, and documents were introduced in evidence in support of the Government's theory that the lands in survey 569 are part and parcel of the lands comprising survey 34 and the upland of what is commonly known as Mare Island upon which the buildings of the Navy Yard are located. The evidence is interesting but without convincing force in the face of the facts opposed to it. In other words, the Government has failed to sustain the burden of proof resting upon it.

It appearing that the lands in suit were not originally a part of Mare Island and were not embraced in the Castro grant, the reservation for naval purposes [161] does not apply to them, and the attack upon the patents fails.

Defendants have set up in their answers affirmative defenses of (1) the statute of limitations, (2) establishment and recognition of a boundary line between surveys 34 and 569, and (3) equitable estoppel.

Defendants Mary W. Stewart et al. plead that as to two of the patents, swamp land patent No. 72 and swamp land patent No. 152, the suit is barred by Sec. 8 of the Act of March 3, 1891, which provides that "Suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such

patents.'"[2] Patent No. 72 was issued on June 5, 1896, and patent No. 152 on February 7, 1910. The suit was commenced April 22, 1930. One patent was issued thirty-four years before suit, and the other twenty years before. Clearly, as to the lands covered by the two patents, the suit is barred by the six-year statute of limitations. The case of United States v. Chandler-Dunbar Water Power Company, 209 U. S. 447, is directly in point, and is conclusive.

In the light of the following facts, which I think present an insuperable obstacle to the Government's case, it is unnecessary to discuss the legal phases of the second and third defenses:

1. The lands in suit prior to reclamation by the defendants and their predecessors in interest were swamp and overflowed lands within the provisions of the Swamp Lands Act through which title passed to the State of California. [162]

2. The lands were surveyed in the year 1869 under the authority of the State, and are identified by said survey as survey No. 569 and as containing 7,413.48 acres; thereafter, on April 7, 1874, the State issued its patent conveying all of the lands to John W. Pearson.

3. Patents No. 72 and No. 152 were issued to the State of California by the United States under the provisions of Swamp Lands Act on June 5, 1896, and February 7, 1910, respectively; also on April 26, 1924, a patent, No. 937055, was issued to the

(2) Sec. 8 of the Act of March 3, 1891; 26 Stats. 1099; Title 43 USCA Sec. 1166.

State by the Government under the provision of the Swamp Lands Act. A portion of the lands in suit are included in these patents.

4. For more than fifty years last past the lands in suit have been in the actual, open, and exclusive possession of the defendants and their respective predecessors in interest.

5. In 1883 a suit was brought in the Superior Court of Solano County, State of California, afterwards removed into the United States Circuit Court, to recover possession of the very lands in suit. The title of the case is The San Francisco Savings Union, The Bank of California, and George A. Nourse, plaintiffs, v. John Irwin, defendant. The trial was held before Honorable Stephen J. Field, Associate Justice of the United States Supreme Court, sitting as a Circuit Judge, and Circuit Judge Lorenzo Sawyer. The court found all of the issues in favor of plaintiffs and caused judgment to be entered thereon in their favor for the [163] possession of the premises in controversy. The opinion was written by Mr. Justice Field, and may be found in Volume 28 of the Federal Reporter, beginning at page 708.(3) The holding of the

(3) Read in connection with present litigation, the following excerpt from Mr. Justice Field's opinion is significant:

"From the date of that conveyance [Bissell and Aspinwall deed], the United States have been in possession of the island, and have constructed there large and expensive buildings for the uses of the navy, including a navy-yard. They have also oc-

Circuit Court in the Irwin case is an important fact in this litigation. Defendant Irwin was the officer in command of the Navy Yard at the time. The United States was the real party interested as defendant. Irwin was represented by [164] United States Attorney S. G. Hilborn, and A. L. Rhodes, whose appointment as Special Assistant United States Attorney in the case, was authorized by the Attorney General. On appeal to the United States

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casionally asserted ownership over the adjacent overflowed lands, but the acts done by them were not of a character to indicate any settled purpose of occupying the lands, or devoting them to any public uses. They have not constructed any levees to prevent their overflow, or made any efforts to reclaim the lands, or to subject them to any uses of the government. Two shanties, 10 by 12, erected in 1874 or 1875 on the lands nearly eight miles distant from the island, were soon abandoned, and no other buildings have been erected on them. It is plain that the acts which the United States are said to have done to mark their control of the overflowed lands, if done by a private party, would not bar the plaintiffs from asserting their right of possession. There was on their part no such possession as would set the statute of limitations running, and which in time might ripen into a title against the true owners. It was not open, exclusive, and continuous, such as to give notice to the owners of an intention to claim title adversely to them; and the testimony indicates that the plaintiffs were ignorant of any adverse claim on the part of the United States till a short time before the commencement of this suit. It was not accompanied by any of the ordinary acts indicating ownership, and at no time were any such acts done except in the instance mentioned, where the two shanties were constructed, but soon afterwards abandoned."

Supreme Court the Government's interests were represented by Assistant Attorney General Maury. The judgment of the Circuit Court was affirmed, as appears in Irwin v. San Francisco Savings Union, 136 U. S. 578.

6. On December 3, 1873, the Board of Supervisors of the County of Solano established Reclamation District No. 186, which included the lands in suit.

7. In 1897 L. E. Cross began the erection of levees around the lands (survey 569) thereafter also known as Island No. 1 and Cross Island. Before commencing the work, Cross advised the Commandant of the Navy Yard of his intention to reclaim, and apparently the Government consented.(4) The lands were reclaimed [165] at an expense of $80,300, and thereafter used for agricultural purposes and the raising and pasturing of stock.

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(4) The following letters were exchanged between Cross and the Commandant of the Navy Yard relative to the reclamation of the lands:

"Stockton, Cal., Dec. 5th, 1896.

"Sir:

"I intend within the next thirty days to begin the reclamation of the tule land north of the Government boundary line, and desiring no conflict with the Government or its representatives I would respectfully ask that I may, at my own expense, employ a Surveyor to locate said lines for me. I have asked Mr. Simonton of the Y & D Depmt to do the work for me, which he refuses to do without your knowledge

8. George Cross, son of L. E. Cross, lived upon the lands, farming them for his father from 1898 to 1907. Since the decision in the Irwin case the southeasterly line of survey 569 has been recognized as the northwesterly limit of the Mare Island reservation.(5) In 1914 the Government erected and has

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and consent,—he being employed by the Government would naturally look out for the Government's interest as well as mine.

"Very respectfully,

"L. E. Cross.

"To Admiral W. A. Kirkland

"Commandant Mare Island Navy Yard."

Admiral Kirkland replied:

"In response to your letter of the 5th inst., you are informed that we have notified the Department of Yards and Docks to grant Mr. Simonton permission to make the survey desired by you. At the same time I have directed the Civil Engineer of the Yard to extend all necessary information and keep an eye on the work in order that the boundary line once established may be done so accurately that no objections will ever be raised by either of the parties interested therein."

(5) In response to inquiries from the First Assistant Secretary of the Interior relative to the limits of Mare Island, the First Assistant Secretary of the Navy replied on February 1, 1913, in part as follows:

"Originally all of the tule land adjoining and to the north of Mare Island was claimed as a part of Mare Island. This tule land had, however, been sold to the State and the question as to the ownership of about 7,413 acres was taken to court and Justice Field decided in the case of San Francisco Savings Union and others v.

since [166] maintained the present boundary line fence.

9. On March 2, 1897, California passed an act (California Stats. 1897, p. 51) ceding to the United States exclusive jurisdiction over all lands within the State then held, occupied, or reserved by the United States for military purposes or defense, or that might hereafter be ceded or conveyed to the United States for such purposes, provided that a sufficient description by metes and bounds upon map or plan of such lands be filed in the proper office of record in the county in which the same were located. Pursuant to this Act the Government recorded in the office of the County Recorder of Solano County a map of the Mare Island Navy

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Irwin in the Circuit Court, District of California, July 8, 1886, that title to the land in question rested with individuals who had purchased it from the State (see 28 Fed. 708). All of the land originally claimed as Mare Island coming in township 4 North, range 4 West, Mount Diablo Meridian, was covered by this decision. This decision was afterwards confirmed by the Supreme Court of the United States. See 136 U. S. 578.

"There is forwarded herewith blueprint of Plan R-212 which shows the present limits of Mare Island."

On August 17, 1923, First Assistant Secretary of Interior Finney gave an opinion that the title to the property comprised by swamp land survey No. 569, embracing all the lands north of survey No. 34, was lost to the United States by the decision in Irwin v. San Francisco Savings Union, 136 U. S. 578, and that all of the swamp lands in that area should be patented to the state.

Yard reservation on November 10, 1913, in Book 5 of Maps, page 4. Upon this map the northwesterly boundary of the reservation is shown as the southeasterly line of survey 569.

10. In 1926 defendant Sears Point Toll Road Co. constructed a public toll road across survey 569. The road was in course of construction for two years, is 7.3 miles long, and cost $180,000. Since the road was built a number of franchises have been granted to the Company.

11. Defendant West End Land Company paid $27,000 for its land in 1923, and has expended $25,000 in improvements. Defendant Field & Tule Land Company bought 500 acres twenty years ago, paying $25 to $35 per acre. Its improvements cost in excess of $22,500. Defendant James Irvine purchased lands in 1928 for which he paid $100,000 and in addition spent $26,000 on improvements. [167]

12. For fifty-seven years all of the lands in suit have been taxed by the State and its political subdivisions. Since the Irwin decision in 1890 a number of civil actions have been brought and prosecuted in the courts of California, pertaining to the lands in controversy.

In addition to the facts enumerated above, there are more to the same effect that might be mentioned. All are undisputed, and in their nature indisputable. They cannot be explained away or overcome. They show that for half a century the defendants and their predecessors in interest have been in the open, exclusive, continuous possession

of the lands in survey 569. The lands have been reclaimed, homes have been built upon them, and they have been farmed and used for other useful purposes. People have lived upon the lands, and like other California citizens and residents, they have performed civic duties and exercised political privileges. These facts, in my opinion, preclude the Government from ever establishing its claim to ownership and possession of the lands in suit.

I therefore find and conclude that this suit is barred by the statute of limitations as to the lands in swamp land patents 72 and 152; that the lands in suit embraced in survey 569 are not a part of Mare Island; that the United States has no title in the lands in suit, but that the title to them is in the defendants, who are entitled to a decree quieting their title.

Dated: August 24, 1939. [168]

[Title of District Court and Cause.]

ORDER OF RULINGS ON EVIDENCE OFFERED AT TRIAL AND FOR JUDGMENT

I.

During the trial of the above-entitled case certain evidence was admitted by the court subject to the objection of the parties, the court reserving its ruling in each instance. As to such reservations it is now Ordered:

1. That the objection of the Government to defendants' offer of the judgment roll in Bouldin v. Phelps, 30 F. 547, is Sustained and exception noted (Trans. Vol. 4, page 226).

2. That the objection of the Government to defendants' offer of the certified copy of Judge Rhodes' appointment as Special Assistant Attorney for the United States in the Bouldin case is Sustained and exception noted (Trans. 4, 226).

3. That the Government's objection to defendants' offer of the judgment roll in San Francisco Savings Union v. Irwin, 28 F. 708, is Overruled and exception noted (Trans. 4, 228).

4. That the Government's objection to [169] defendants' offer of a certified copy of the appointment of Judge Rhodes as Special Assistant United States Attorney in the Irwin case is Overruled and exception noted (Trans. 4, 228).

5. That the Government's objection to defendants' offer of a letter from the file in the Irwin case by Acting Attorney General Jenks to Judge Rhodes, ordering him to sue out a writ of error in the Irwin case is Overruled and exception noted (Trans. 4, 228). The Government's motion to strike the letter as read in evidence is Denied and exception noted (Trans. 4, 230).

6. That the Government's objections to the testimony of E. D. Butler, John B. Coleman, Olga D. Sievert, Myford Irvine, and George Cross, offered by defendants, are Overruled and exception noted (Trans. 4, 235-244).

7. That the Government's objection to defendants' offer of letter from files of the Navy Yard from L. E. Cross to Admiral Kirkland, Commandant, is Overruled and exception noted; that Government's objection to letter of Admiral Kirkland in reply to Mr. Cross's letter is Overruled and exception noted; Government's motion to strike is Denied and exception noted (Trans. 4, 244-246).

8. That the Government's objection to defendants' offer of certified copy of letter of October 18, 1912, from First Assistant Secretary of Interior to Secretary of Navy is Overruled and exception noted; that Government's objection to defendants' offer of letter in reply, dated February 1, 1913, is Overruled and exception noted (Trans. 4, 247-249).

[170]

9. That Government's objection to defendants' offer of blueprint R-212 is Overruled and exception noted (Trans. 4, 250).

10. That the following objections by the Government to defendants' offers of evidence are each Sustained and exceptions noted, towit: Letter of July 25, 1879, from Acting Commissioner of the General Land Office to the Surveyor General in San Francisco; letter of August 7, 1879, from Acting Commissioner to Surveyor General; letter of August 7, 1879, from Surveyor General to Acting Commissioner; Hanley protests of July 5, 1879, and July 16, 1879; letter of February 28, 1921, to the Surveyor General in San Francisco from Acting Commissioner (Trans. 4, 251-256).

11. That the objections of the Government to defendants' offers of letter of August 17, 1923, decision 28814, and letter of September 19, 1923, from Assistant Commissioner to Surveyor General, San Francisco, are Overruled and exceptions noted (Trans. 4, 257).

12. That the objection of the Government to defendants' offer of testimony of Mr. Stewart is Overruled and exception noted (Trans. 4, 259).

13. That the objection of the Government to defendants' offer of testimony of W. C. Heyer is Overruled and exception noted.

14. For the purpose of completing the record, in the event that the court has overlooked any objections of the Government to any evidence offered by [171] defendants, it is Further Ordered that such objections are Overruled and exceptions noted.

II.

It is Ordered that the complainant take nothing by its suit, and that defendants have judgment as prayed for in their several answers.

Counsel for defendants may submit findings of fact and conclusions of law in accordance with the views expressed in opinion filed herewith.

Dated: August 24, 1939.

A. F. ST. SURE
United States District Judge.

[Endorsed]: Filed Aug. 24, 1939. [172]

[Title of District Court and Cause.]

ORDER ALLOWING TIME TO COMPLAINANT TO FILE OBJECTIONS TO DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

It is Hereby Ordered that the Complainant may have to and including October 15, 1939, in which to lodge objections to the Findings of Fact and Conclusions of Law proposed by defendants.

Dated: September 11, 1939.

A. F. ST. SURE
United States District Judge.

[Endorsed]: Filed Nov. 1, 1939. [173]

[Title of District Court and Cause.]

COMPLAINANT'S OBJECTIONS TO DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND COMPLAINANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Now comes complainant and with leave of court proposes its objections to the findings of fact and conclusions of law heretofore proposed by defendants, as follows:

1.

Complainant objects to Paragraph No. 1 on pages 3 to 5 and asks that it be stricken for the reason that it is not supported by and is contrary to the

evidence. Complainant further objects to that part of Paragraph No. 1 on page 4 beginning at line 20, to-wit:

> That at no time subsequent to September 28, 1850 has complainant ever occupied said lands or any thereof, either as a part of the Mare Island Navy Yard Reservation, or for public or military or naval purposes or otherwise or at all, and that at no time since September 28, 1850 has complainant ever been in the possession of or entitled to the possession of said lands or any part thereof. That for forty years last past the said defendants owning, severally, those portions of said lands described in Subdivision II of the Amended Bill of Complaint as above stated and their respective predecessors in interest (other than complainant) have been in and entitled to the possession of said lands so owned by them as aforesaid and their said possession of said lands has at all times been actual, open, notorious, under claim of right and under color of title and adverse to the complainant and to the whole world.

and asks that it be stricken for the reason that it sets forth erroneous conclusions of law and is irrelevant and immaterial. [174]

2. . .

Complainant objects to Paragraph No. 3 on page 5 and asks that it be stricken for the reason

that it is not supported by and is contrary to the evidence.

3.

Complainant objects to Paragraph 5 on pages 6 and 7 and asks that it be stricken for the reason that it is not supported by and is contrary to the evidence and is contrary to the findings of fact of this Court in the case of United States v. O'Donnell, et al., which findings, delineating the lands which constitute Mare Island, were made upon substantially the same evidence as in this case. Complainant further objects to that part of Paragraph No. 5 on page 7 beginning at line 13 as follows:

> That a large portion of the lands owned by defendant James Irvine as described and set forth in Exhibit A hereto lies to the east and northeast of Dutchman's Slough, also known as Boat Cut-off; that said portion of said lands is more particularly shown upon the map attached to the answer of defendant James Irvine as Exhibit B thereto; that said Dutchman's Slough or Boat Cut-off is and ever since prior to the year 1841 has been a natural navigable body of water, cutting off all of said lands lying to the east and northeast thereof from all of the remaining lands described in Exhibit A hereto and all of the lands lying within said Mare Island Navy Yard Reservation.

and asks that it be stricken for the reason that it sets forth an erroneous conclusion of law and is irrelevant and immaterial.

4.

Complainant objects to that part of Paragraph No. 6 commencing at line 6 on page 8 as follows:

That neither the said survey nor the said plat so made and prepared by said Freeman was ever approved, either expressly or impliedly, by the Surveyor General of California, either as required by said Land Commission Act or by said Act of July 1, 1864 or otherwise or at all. That copies of said survey and said plat were thereafter transmitted by the Surveyor General of California to the Commissioner of the General Land Office. That neither the said survey nor the said plat was ever approved, either expressly or impliedly, by the Commissioner of the [175] General Land Office, either as required by said Land Commission Act or by said Act of July 1, 1864 or otherwise or at all, and neither said survey nor said plat was ever used or acted upon by the Commissioner of the General Land Office as an approved survey or as an approved plat. That neither the said survey nor the said plat was ever approved, either expressly or impliedly, by the Secretary of the Interior, either as required by said Land Commission Act or by said Act of July 1, 1864 or otherwise or at all, and neither said survey nor said plat was ever used or acted upon by the Secretary of the Interior as an approved survey or as an approved plat. That neither the said survey nor the said

plat has ever been approved as required by law or otherwise. That a large part, but not all, of the lands described in Subdivision II of the Amended Bill of Complaint are embraced within the exterior limits of said survey.

and asks that it be stricken for the reason that it is not supported by and is contrary to the evidence, sets forth an erroneous conclusion of law, and is contrary to the findings of fact of this Court in the case of United States v. O'Donnell, et al., in which this Court found upon the same evidence that the Freeman survey was approved in all respects, employing in said finding the following words and figures:

In July, 1877, the Surveyor General of California in compliance with the 13th section of the Act entitled "An Act to ascertain and settle the private land claims in the State of California", approved March 3, 1851, caused said private land claim for Mare Island to be surveyed and a plat to be made thereof, and thereafter gave due notice that same had been done by publication once a week for four consecutive weeks in two newspapers, one published in the City of San Francisco, to-wit, "The Alta California" and one published near the Land Surveyor, "The Vallejo Evening Chronicle", published in the City of Vallejo, County of Solano, State of California, and retained in his office for public inspection the

survey and plat until ninety days from the date of the first publication in San Francisco expired; that no objections were made to said survey and the said Surveyor General of California duly approved the same and transmitted a copy of the survey and plat thereof to the Commissioner of the General Land Office at Washington, for his examination and approval. Thereafter the Commissioner of the General Land Office duly approved said survey and plat and caused the same to be filed in a jacket called "The Mare Island Jacket" in the file of military reservations in the General Land Office; thereafter on September 22, 1905, the Commissioner of the General Land Office expressly approved, used and acted on said survey and plat and thereafter, on September 28, 1905, the Secretary of the Interior expressly approved and concurred in said action of the Commissioner of the General Land Office, and approved, used and acted on said survey and plat. [176]

5.

Complainant objects to those parts of Paragraphs Nos. 7 and 8 on page 9 beginning at line 4, and line 18, to-wit, "That none of the lands described in Subdivision II of the amended bill of complaint was included or embraced within the lands so exempted and reserved and none of said land was exempted or reserved from the sale by said execu-

tive order or was subject to reservation at any time subsequent to September 28, 1850", and asks that the parts of Paragraphs 7 and 8 quoted above be stricken for the reason that they are not supported by and are contrary to the evidence, set forth erroneous conclusions of law, and are contrary to the finding of this Court in the case of United States v. O'Donnell, et al., to-wit:

> * * * It is not true that Exhibit "K" referred to and incorporated in said Answer (or plaintiff's Exhibit "L-16" in Evidence), is the survey of the Board of Officers sent to California to select a site for a Navy Yard nor is the only part conveyed and made part of said Mare Island by Bissell, Aspinwall and McArthur. That said Exhibit "K" is simply a detailed drawing of the proposed improvement of Mare Island. The survey referred to in said conveyance and in the selection by Secretary Kennedy and the reservation by President Fillmore is the survey and plat of Mare Island made by Cadwallader Ringgold in his chart of San Francisco Bay. It is not true that Exhibit "K" (the Cutt's detailed drawing, so-called) is the controlling description of the conveyance from Bissell and Aspinwall to the United States nor that said survey follows the water's edge or the natural boundaries of Mare Island throughout their entire extent or embraces the entire area of Mare Island or all of the lands that were granted to Victor Castro and by him conveyed to the predecessor in title

to the United States. It is not true that the Navy Yard plan attached to said exhibit also shows the area of Mare Island or the southerly line of said Survey No. 34, nor does the same exclude the areas in said State Surveys Nos. 34 and 569.

6.

Complainant objects to that part of Paragraph No. 9 on pages 9 and 10 beginning at line 10 on page 10, to-wit: "That each of said patents is in all respects valid and in full force and effect", and asks that that part quoted above be stricken for the reason that it is not supported by and is contrary to the evidence, and for the further reason that it sets forth an erroneous conclusion of law. [177]

In line 12 on page 10 the second "of" should be deleted and "claimed by" be inserted in lieu thereof; in line 14 of page 10 of the second "of" should be deleted and "claimed by" inserted in lieu thereof; in line 16 of the first "of" should be deleted and "claimed by" be inserted in lieu thereof.

7.

Complainant objects to Paragraph 10, and paragraphs (a), (b), (c) and (d) thereunder, on pages 10 to 18, for the reasons that they set forth erroneous conclusions of law, and are irrelevant and immaterial. Complainant further objects to that part of Paragraph 10, commencing at line 20, on page 11, to-wit:

> said filing being a map showing the boundaries of said Mare Island Reservation;

that part commencing at line 23 on page 11, to-wit:

> That none of the lands described or referred to in Subdivision II of the Amended Bill of Complaint was a part of said Mare Island so reserved or was held or occupied or reserved by the United States for military purposes or defense or was included or embraced within the description of said Mare Island Reservation or map thereof recorded by the United States as found above, nor was jurisdiction over any of said lands ceded by the State of California to the United States;

that part of paragraph 10 commencing at line 5 on page 12, to-wit:

> That beginning in the year 1890 and consistently ever since (except for the filing of this action on April 22, 1930) the United States has recognized that the northwesterly boundary of said Mare Island Reservation did not extend beyond or to the north of the southeasterly boundary of said Survey 569. That said southeasterly boundary of said Survey 569 has been established, recognized and acquiesced in by the United States as the line beyond which said Mare Island Reservation did not extend, and at no time since 1890 has the United States asserted or attempted to assert or exercise jurisdiction, dominion or sovereignty over any of the lands within said

Survey 569 as a part of said Mare Island Reservation. That on the contrary, ever since 1890 the State of California has, with the knowledge of and without objection by the United States, consistently asserted and exercised its jurisdiction over all of said lands as lands subject to its jurisdiction, dominion and sovereignty and as lands which were not within or a part of said Mare Island Reservation. That said southeasterly boundary line of said Survey 569 became the established, recognized and accepted public boundary line between said [178] Survey 569 and said Mare Island Reservation in the manner next hereinafter set forth;

that part of Paragraph 10 commencing at line 2 on page 13, to-wit:

That on September 28, 1850 the United States by said Swamp Land Act granted to the State of California all unsold swamp and overflowed lands made unfit thereby for cultivation within said State, including, as a part thereof, all of the lands described and referred to in Subdivision II of the Amended Bill of Complaint, being the lands embraced within said Survey 569. That the southeasterly boundary line of the said lands and of the lands owned by defendants as set forth in Exhibit A hereto is the southeasterly boundary of said Survey 569. That on or about the 7th day of April,

1874 the State of California having theretofore and in the year 1869 sold the lands in Survey 569 to one Jacob C. Hinckley, issued its patent for said land to one John W. Pearson, as assignee of said Hinckley, and thereafter the defendants named in paragraph 1 of these Findings of Fact by mesne conveyance acquired from said Pearson those portions of said Survey 569 owned by them as set forth in Exhibit A hereto. That the United States has never at any time occupied any portion of said Survey 569 nor has it at any time used any portion of said lands for any purpose in connection with said Mare Island Reservation nor has any portion of said Reservation been established or located thereon;

that part of Paragraph 10 commencing at line 16 on page 14, to-wit:

That ever since the affirmance of said judgment, until the commencement of this action, said judgment was and has been accepted by the United States and by the State of California and by all persons interested in said lands as conclusively establishing that none of the lands in said Survey 569 was a part of Mare Island or was owned by the United States and until the commencement of this action on the 22nd day of April, 1930 the United States asserted no claim to any right or interest in said lands. That from the affirmance of said judg-

nent to the commencement of this action the southeasterly boundary line of said Survey 569 has consistently been recognized by the United States as the public boundary line between said Mare Island Reservation and the territory subject to the jurisdiction, dominion and sovereignty of the State of California, to wit, the lands described in Subdivision II of the Amended Bill of Complaint, and the State of California has ever since the affirmance of said judgment consistently exercised jurisdiction, dominion and sovereignty over all of the lands embraced in said Survey 569, all as evidenced by the following acts among others: [179]

and asks that the above quoted portions be stricken for the reason that they are not supported by and are contrary to the evidence, and set forth erroneous conclusions of law.

8.

Complainant objects to Paragraph 11, on pages 18 to 20, and asks that it be stricken for the reason that it sets forth erroneous conclusions of law and is irrelevant and immaterial to the issues involved in this case.

9.

Complainant objects to the conclusions of law proposed by defendants, being Paragraphs Nos. 1 and 2 on page 21, and asks that they be stricken for the reason that they are not supported by and are

contrary to the established law. Complainant further objects to the proposed conclusions of law, as follows:

(1) Paragraph 1 of said Conclusions of Law is erroneous in that it asks the Court to rule that the statute of limitations is applicable against the United States to Swamp Land Patents 72 and 152 as described in the answer.

(2) That Paragraph 2 of said Conclusions of Law is based upon Findings of Fact proposed by the Defendants which are not supported by the evidence, namely, the finding that the boundaries and extent of Mare Island, as granted by the State of Mexico to Victor Castro, and as confirmed by the California Land Commission did not include the land in controversy claimed by the defendants.

(3) That Paragraph 2 of said Conclusions of Law is based in part upon the Findings of Fact as proposed by defendants that the defense of equitable estoppel and the defense of established public boundary is available to the defendants against the United States. [180]

In lieu of defendants' proposed findings of fact and conclusions of law, complainant respectfully asks this Court to adopt complainant's proposed findings of fact and conclusions of law, as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above-entitled action came on regularly for trial before the above-entitled Court, the Honorable

A. F. St. Sure, United States District Judge, presiding, upon complainant's "Amended Bill of Complaint" and the "Amendments to Amended Bill of Complaint" and upon the "Answer of defendant James Irvine to the Amended Bill of Complaint and to the Amendments thereto" and the first and second amendments to said answer of said defendant and upon the "Answer of Defendants Mary W. Stewart, Sears Point Toll-Road Co., a corporation, American Trust Company, a corporation, Bay Land Company, a corporation, Field and Tule Land Company, a corporation, and West End Land Company, a corporation, to the Amended Bill of Complaint and to the Amendments Thereto" and the first and second amendments to said answer of said defendants, said second amendments to said answers having been filed with leave of court to conform to the proofs. The complainant and said answering defendants appeared by their respective counsel. A stipulation in lieu of answer was filed on behalf of defendant Pacific Gas and Electric Company. The action was, prior to trial and upon stipulation, dismissed with prejudice as to defendants Meta S. Healy (substituted as a defendant in the action in the place of defendant W. H. Healy, deceased) Russ Investment Company, a corporation (sued as Russ Investment Co., a corporation), Henry A. Kendal (sued as Henry A. Kendall), Joseph Dubeault, Wilfrid Debeault (sued as Wilfred Dubeault), and Charles J. Monahan, and as to the lands owned by said defendants described in

the answers filed by said defendants and in the orders of dismissal as to said defendants. Prior to trial defendants Evadne B. Middlemas, Louise DeVoe Brickell, Crocker First Federal Trust Company (substituted as a [181] defendant in the action in place of Howard Brickell, deceased), Ida M. Brickell, Frank E. Knight, California Pacific Realty Company, a corporation, (sued as California Pacific Realty Co., a corporation), California Pacific Title & Trust Company, a corporation, (sued as California Pacific Title and Trust Co., a corporation), American Securities Company, a corporation, (sued as American Securities Co., a corporation, and A. O. Stewart, sued as Fourth Doe, filed disclaimers in the action and as to said defendants the action is dismissed. The following named defendants, to-wit, Henry Claude Kettleman, C. D. Hillman, sued as First Doe, E. G. Swanberg, sued as Third Doe, J. C. Aitken, sued as Fifth Doe, H. V. Casebolt, sued as Sixth Doe, H. W. Davis, sued as Seventh Doe, having failed to appear in the action, decrees pro confesso were ordered against said defendants. Defendant James Clayton, sued as Second Doe, having died more than two years ago, the action as to said defendant is dismissed. Defendant Edmund Burke, sued as to Tenth Doe, having died and Walter E. Burke as administrator of the estate of said Edmund Burke having been substituted as a defendant in his place and stead, and said Walter Burke having died more than two years ago, the action is as to said defendant dismissed.

Defendants Eighth Doe, Ninth Doe and all other defendants not hereinabove specifically mentioned not being found or served, the action is as to them dismissed. The case was tried on June 8th, June 9th, June 11th, and June 15th, 1937, and evidence both oral and documentary having been introduced and received and briefs having been filed and the Court having, upon written stipulation, visited and viewed the lands and premises which are the subject of the action, and the cause having been submitted to the Court for consideration and decision, after due consideration thereof the Court makes its decision and its findings of fact and conclusions of law as follows: [182]

FINDINGS OF FACT.

The Court now finds as follows:

I.

That the defendant Sears Point Toll-Road Co., at all the times mentioned as to it in the complaint on file herein was and now is a corporation organized and established under and by virtue of the laws of the State of California, doing business in and duly organized to transact business in the State of California and having its principal place of business in the City and County of San Francisco;

And that the defendant Bay Land Co., at all the times mentioned as to it in the complaint on file herein, was and now is a corporation organized and established under and by virtue of the laws of the

State of California, doing business in and duly organized to transact business in the State of California, and having its place of business in the City and County of San Francisco;

And that the defendant Field & Tule Land Co., at all the times until the year 1934, mentioned as to it in the complaint on file herein, was a corporation organized and established under and by virtue of the laws of the State of California, doing business in and duly organized to transact business in the State of California and having its principal place of business in the City and County of San Francisco; but that said company since the year 1934, has been and now is disincorporated;

And that the defendant West End Land Co., at all the times mentioned as to it in the complaint on file herein was and now is a corporation organized and established under and by virtue of the laws of the State of California doing business in and duly organized to transact business in the State of California and having its principal place of business in the City and County of San Francisco;

And that the defendant Pacific Gas & Electric Company at all the times mentioned as to it in the complaint on file herein was and now is a corporation organized and established under and by virtue [183] of the laws of the State of California doing business in and duly organized to transact business in the State of California and having its principal place of business in the City and County of San Francisco;

II.

That the place of residence of the other defendants are as alleged in Paragraph I of the Amended Bill of Complaint.

III.

That the complainant, the United States of America, is the owner of, and since the year 1853 has been entitled to the possession of all those certain lands situate, lying and being in the Counties of Napa and Solano in the Northern District of the State of California, and more particularly described and set forth in Exhibit "A" to these Findings which exhibit is incorporated and made a part hereof; and that none of the defendants herein or their predecessors in claim now have or ever have had any estate, right, title or interest in said above described lands or any part thereof. The claim of each defendant is described in said Exhibit "A".

IV.

That by an instrument dated May 20, 1841, executed by Juan B. Alvarado, Constitutional Governor of the Department of California, a grant was duly made by the Republic of Mexico to one Victor Castro of the Isla de la Yegua or Mare Island "in all its extent" which grant included and now embraces said lands referred to in said Paragraph III above, and described in Exhibit "A" hereto. Said instrument was filed for recordation in the office of the County Recorder for Sonoma County, State of

California, on July 28, 1852, said Mare Island, then being within and a part of Sonoma County.

V.

That George W. P. Bissell and William H. Aspinwall did acquire by mesne conveyances all the right, title and interest of said Victor Castro under said grant, and did file their petition in the office of [184] the Board of Land Commissioners asking confirmation to them of their title to the lands included in said grant in accordance with the provisions of the Act of Congress entitled "An act to ascertain and settle the private land claims in the State of California", approved March 3, 1851 (9 Stats. 631); that proceedings were duly and regularly had before said Board of Land Commissioners, which was empowered and authorized to determine the validity of Mexican grants and titles by said Act, and a decree was duly and regularly made and entered by said Board confirming to said petitioners their right and title to the lands in said grant, said decree of confirmation being in the words and figures following:

"No. 307. George W. Bissell, et al., v. United States. In this case, on hearing the proofs and allegations, it is adjudged by the Commission that the claim of said petitioners is valid, and it is therefore deemed that their application for a confirmation thereof be allowed.

"The place of which confirmation is hereby given is situated in the Bay of San Francisco and is called 'Isla de la Yegua' or 'Mare Is-

land' and being an island is bounded by the water's edge.

"Filed in Office May 8, 1855.
R. AUG THOMPSON
S. B. FARWELL,
Commissioners,
GEORGE FISHER,
Sec'y."

That thereafter said Board duly and regularly did certify its decree with reasons therefor to the United States Attorney for the District of California as provided by Sections 9 and 10 of said Act; that the United States of America by the United States Attorney duly and regularly presented its petition to the United States District Court for the District of California in which said land was situated, and did pray for a review of said decision and decree of said Board; that such proceedings were duly and regularly had in said Court and on March 2, 1857, said Court duly and regularly gave and made its order for judgment in said cause confirming said grant; that thereafter on April 15, 1930, the District Court of the United States for the Northern District of California, the successor to said Court, duly and [185] regularly made and entered its judgment and decree confirming title in the petitioners to the above described lands and directing that said decree be entered nun pro tunc as of the 2nd day of March, 1857.

VI.

That in July, 1877, the Surveyor General of the United States for California in compliance with Section 13 of said Act of March 3, 1851, did cause the boundaries of Mare Island to be surveyed as the boundaries thereof had been finally confirmed, and a plat thereof to be made; that thereafter due notice was given that the same had been done by due publication in the "Alta California", published in the City and County of San Francisco, and the "Vallejo Evening Chronicle", published in the City of Vallejo, County of Solano; and that said survey and plat thereof were retained in the office of the Surveyor General of the United States for California for the period required by said Act; that no objections were made to said survey as provided by said Act and said Surveyor General of the United States for California duly approved said survey and transmitted a copy and a plat thereof to the Commissioner of the General Land Office and Offices, Washington, D. C. for examination and approval.

That thereafter the Commissioner of the General Land Office approved said survey and plat and filed the same in a jacket designated, "Mare Island Jacket" in the file of military reservations in the General Land Office; that on September 22, 1905, the Commissioner of the General Land Office approved, used and acted on said survey and plat and thereafter, on September 22, 1905, the Secretary of the Interior of the United States approved the

action of the Commissioner of the General Land Office and approved, used and acted on said survey and plat.

VII.

That the boundary of Mare Island including the lands described in Exhibit "A" as a part thereof was fixed by the final decrees [186] of confirmation entered by the Board of Land Commissioners and the United States District Court and is the line of mean high tide on the shores of said island as the same was determined by James E. Freeman, Deputy Surveyor of the United States, in his survey of said Island in July, 1877, together with all accretions thereto, as more fully appears from the plat of said survey on file in the office of the United States Surveyor General for California in San Francisco, California; that all of the lands described in Exhibit "A" to these Findings lie within the boundaries of Mare Island as fixed by said Board of Land Commissioners and the United States District Court and as surveyed by said James E. Freeman.

VIII.

That the defendants herein and each and every one of them predicate their claim to, or right, title, interest or estate in said lands hereinbefore described upon the conveyance by the State of California either mediately or immediately of the interest claimed to have been acquired by the provisions of the Act of Congress approved September 28,

1850, (9 Stats. 519) known as the "Swamp Land Act": that none of said defendants claiming any title to or interest in the lands hereinbefore described under conveyances from the State of California are successors in interest of, in privity with, or claim under or in right of the United States in said proceeding for the confirmation of title under the Act of March 3, 1851, (9 Stats. 631); that the decrees entered in said proceedings confirming the title of said lands in George W. P. Bissell and William H. Aspinwall are binding on and conclusive of the rights, title and interest of all defendants herein and their predecessors in claim; that none of said lands was at the time of the passage of the "Swamp Land Act" a part of the public domain of the United States, and no title thereto ever vested in the State of California or its transferees; that said claims of said defendants to the lands hereinbefore described and each and every one of them is without any right whatsoever, and title thereto is and has [187] been in the United States of America since that certain deed of conveyance executed on January 4, 1853, by George W. P. Bissell, W. P. Aspinwall and Mary S. McArthur as grantors to the United States of America as grantee, by which the United States of America acquired all the right, title and interest of the grantors to Mare Island, including all the tule and lowland and marsh belonging to the same or which was ever reputed or claimed to belong to the same; said deed of conveyance being duly recorded

in the County Recorder's Office of Solano County, California, in April 18, 1853.

IX.

That on November 6, 1850, the President of the United States by Executive Order reserved to the United States of America for military and naval purposes and from entry by any individual the following tract of land, among others, on San Francisco Bay, to-wit:

MARE ISLAND.

That on February 9, 1853, the Secretary of the Navy of the United States, acting under and pursuant to the Act of August 31, 1852 (10 Stats. 104), duly selected the tract of land in the Bay of San Francisco bounded by the Bay of San Pablo, the Straits of Carquinez and Napa Creek, known as Mare Island, together with all its appendages of tule and marsh land ordinarily reputed to belong to said Island, and the harbors, waters and anchorages connected therewith, and necessary to the use of the same. That thereafter the Secretary of the Navy on February 9, 1853, duly recommended to the President of the United States that said lands and premises be reserved for public use; and on February 11, 1853, President Millard Fillmore did duly approve said recommendation and did make said reservation; that said reservation was communicated to the Secretary of the Interior of the United States and recorded by him pursuant to law.

That the Presidential Reservation of Mare Island included and embraced the above referred to lands described in Exhibit "A" [188] hereto, and by reason of said Presidential Reservations, said lands were withdrawn from all forms of location, settlement, selection, filing, entry or disposal under the Public Land Laws of the United States, and since the dates of reservation herein mentioned, no part of said lands has been subject to appropriation, or the institution of any right under the Public Land Laws of the United States; that the Presidential Reservation aforesaid has never been amended or revoked, and that all the lands described herein in Exhibit "A", ever since the aforesaid dates of reservation, have been and now are a part of the Mare Island Navy Yard Reservation, and held for the exclusive use and benefit of the United States Navy.

X.

That it is not true that the southeasterly boundary line of the Swamp and Overflow Survey No. 569, or any other line, except that line determined by the survey of James E. Freeman, Deputy Surveyor of the United States, was ever established or recognized by the United States or by the State of California as the public boundary line of the Mare Island Navy Yard Reservation; that it is not true that any survey was ever made by any authorized officer or agent of the United States for the purpose of establishing the southeasterly boundary line of S. & O. Survey No. 569 as the public boundary

line of the Mare Island Navy Yard Reservation, nor did the plaintiff, the United States of America, at any time acquiesce in or recognize the establishment of any such line as the boundary of the Mare Island Navy Yard Reservation.

XI.

That the Secretary of the Interior issued three Swamp Land patents to the State of California purporting to issue them pursuant to the provisions of the Swamp Land Act of September 28, 1850 (9 Stats. 519) including among others the above described lands claimed by the defendants herein, namely; [189]

(1) Swamp Land Patent No. 72 issued in June 1896, as to the lands lying within Township 3 N. R. 5 W. (M.D.B. & M.)

(2) Swamp Land Patent No. 152 issued February 7, 1910, as to the lands lying within Township 4 N. R. 5 W. (M.D.B. & M.)

(3) Patent No. 93705 issued April 26, 1924, as to the lands lying within Township 3, N. R. 5 W. and Township 4 N. R. 5 W. (M.D.B. & M.)

That said lands were not at the various times of the issuance of said patents by the Secretary of the Interior, nor at any time, a part of the public domain of the United States open for entry by private persons or subject to the provisions of the

aforesaid Swamp Land Act or to the jurisdiction of the Department of the Interior or the General Land Office of said Department; that said lands at the various times of issuance of said patents, and at all other times since 1853, have been and now are held as a part of the Mare Island Navy Yard Reservation for the exclusive use and benefit of the United States Navy.

XII.

That the defendant Field & Tule Land Co. claims an estate and interest in a tract of land, which was a part of Mare Island, described in Exhibit "A" hereto. At divers times the defendant, Field & Tule Land Co., without the consent of the complainant, or any authorized person acting for or on its behalf, and in violation of the aforesaid Presidential orders of reservation of Mare Island and of the laws of the United States, did knowingly and wrongfully enter upon, occupy and take possession of said tract of land under said claim and did exclude the complainant herein from possession of said land.

XIII.

That the defendant West End Land Company claims an estate and interest in a tract of land which was a part of Mare Island, as described in Exhibit "A" hereto. At divers times the defendant, West End Land Company, without the consent of the complainant, or any [190] authorized person acting for or on its behalf, and in violation of the

aforesaid Presidential orders of reservation of Mare Island, and of the laws of the United States, did knowingly and wrongfully enter upon, occupy and take possession of said land.

XIV.

That the defendant Bay Land Company claims an estate and interest in a tract of land described in Exhibit "A" hereto, which was a part of Mare Island, and at divers times the defendant Bay Land Company, without the consent of the complainant, or any authorized person acting for or on its behalf, and in violation of the aforesaid Presidential orders of reservation of Mare Island, and of the laws of the United States, did knowingly and wrongfully enter upon, occupy and take possession of said land.

XV.

That the defendant James Irvine claims an estate and interest in a tract of land described in Exhibit "A" hereto, which is a part of these findings. At divers times the defendant James Irvine, without the consent of the complainant, or any authorized person acting for or on its behalf, and in violation of the aforesaid Presidential orders of reservation of Mare Island, and of the laws of the United States, did knowingly and wrongfully enter upon, occupy and take possession of said land.

XVI.

That the defendant Mary W. Stewart claims an estate and interest, in a tract of land described in

Exhibit "A" hereto, which was a part of Mare Island, and at divers times the defendant Mary W. Stewart, without the consent of the complainant, or any authorized person acting for or on behalf of complainant, and in violation of the aforesaid Presidential orders of reservation of Mare Island, and of the laws of the United States, did knowingly and wrongfully enter upon, occupy and take possession of said land. [191]

XVII.

That the defendant, the Pacific Gas & Electric Company claims an interest, to-wit, an easement and right of way for transmission line purposes, as described in Exhibit "A" hereto, by virtue of a deed to it, as grantee, dated May 8, 1911 from Lester E. Cross, grantor, and thereafter recorded in the office of the County Recorder of the County of Napa, and of the Office of the County Recorder of the County of Solano, State of California, and at divers times the defendant Pacific Gas & Electric Company, without the consent of the complainant, or any authorized person acting for or on its behalf, and in violation of the aforesaid Presidential orders of reservation of Mare Island, and of the laws of the United States, did knowingly and wrongfully enter upon, occupy and take possession of said land.

XVIII.

That the defendant the Sears Point Toll-Road Co. claims an estate and interest in certain tracts of

land described in Exhibit "A" hereto, and at divers times the defendant the Sears Point Toll-Road Co., without the consent of the complainant, or any authorized person acting for or on its behalf, and in violation of the aforesaid Presidential orders of reservation of Mare Island, and of the laws of the United States, did knowingly and wrongfully enter upon, occupy and take possession of said land.

XIX.

The findings of fact of this Court in the case of United States v. O'Donnell, Equity No. 2787-S, that the lands within Survey 34, the neck or isthmus of the land adjoining the high area on the northwest and adjoining the lands involved here on the southeast, were and are a part of Mare Island, and as such were included in the Castro grant, is also determinative in this case that the lands described in Subdivision II of the Amended Bill of Complaint were and are a part of Mare Island, since the findings in United States v. O'Donnell were made [192] upon substantially the same documentary evidence as was introduced in this case, and since there is no water course nor any strip of land lower than the ordinary high water mark or lower than the high high water mark which could constitute a soutern boundary north of said Survey 34 south of the channel described as Dutchman's Slough or Boat Cut-off, but, on the contrary, the lands within said Survey 569 have been at all

times and now are physically a part of the same lands within said Survey 34 and that there is not and never has been any water course nor any strip of land lower than the ordinary high water mark or lower than the high high water mark between said two tracts. Accordingly, this Court's findings in United States v. O'Donnell, relevant to the issue as to what lands constituted Mare Island, to-wit, numbers IV(a); VII, VIII, XVI, XX, XXV, XXVII, XXX, XXXVI, XXXIX, XLI, XLV, XLVI, XLVII, and L, which are attached hereto as Exhibit B, are accepted and incorporated herein as findings in this case.

CONCLUSIONS OF LAW.

The complainant is entitled to a decree as follows:

I.

That the complainant, the United States of America, is and has been since the year 1853 the owner and has been entitled to the immediate possession of all those certain lands situate, lying and being in the Counties of Napa and Solano in the Northern District of California, more particularly described in Exhibit "A" hereto, and that none of the defendants herein or their predecessors in claim now have, or ever have had, any estate, right, title or interest in said above described lands, or any part thereof; and that said lands are adjudged and decreed to be the perfect property of the United States of America, free and clear of all claims of

the defendants, or any of them, and that possession of said lands shall be restored to complainant.

II.

That all leases, agreements, deeds, conveyances, transfers, assignments, patents issued by the Secretary of the Interior or the [193] President of the United States, or other instruments or writing under which defendants, or any of them, claim any estate, right, title or interest in or to said lands or any part thereof, be declared null and void and held for naught in so far as the same may include directly or indirectly the above described lands, or any interest therein.

III.

That the complainant have and recover its costs of suit herein.

.....

United States District Judge.

[194]

EXHIBIT A

(1) Claim of Defendant James Irvine.

Defendant James Irvine claims to be the owner in fee simple absolute (subject to the easement and right of way hereinafter mentioned) of all that certain real property situate, lying and being in the Counties of Napa and Solano, State of California, more particularly described as follows, to-wit:

Commencing at the point of intersection of the quarter section line running north and south through the middle of Sec. 31, T. 4 N. R. 4 W., with the boundary line between Napa and Solano Counties, and running thence north along said quarter section line to the middle of South Slough; thence in an easterly, southerly and easterly direction following the center line of said South Slough, to the westerly shore of Napa Bay; thence southerly along the shore of said Napa Bay to the northerly line of S. & O. Survey No. 34; thence westerly along the north line of S. & O. Survey No. 34, to the northwest corner thereof; thence south along the west line of said S. & O. Survey #34, to San Pablo Bay; thence northwesterly along the shore of said San Pablo Bay to its point of intersection with the quarter section line running north and south through the middle of Sec. 6, T. 3 N. R. 4 W.; thence north along the middle quarter section line of said Sec. 6 and Sec. 31 to the place of beginning, containing 3524.15 acres, more or less and being 57.15 acres in Napa County and 3467 acres in Solano County. Excepting therefrom that portion conveyed by Mary W. Stewart and A. O. Stewart to Sears Point Toll-Road Company, dated Nov. 3, 1926, recorded Apr. 1, 1927, in Book 288 of Deeds, at page 434.

Defendant Pacific Gas and Electric Company claims to be the owner of the right of way and ease-

ment for transmission line purposes granted to it by that certain right of way deed, dated May 8, 1911, from Lester E. Cross, as grantor, over the above described land, and recorded in the office of the County Recorder of the County of Napa, California, May 15, 1911, and in the office of the County Recorder of the County of Solano, California, on May 26, 1911.

The Court finds the fact to be that neither the defendant James Irvine nor the defendant Pacific Gas and Electric Company has any right, title, or interest in the above described land, and the plaintiff, the United States of America, is the owner thereof in fee simple absolute. [195]

(2) Claim of Mary W. Stewart.

Defendant Mary W. Stewart claims to be the owner in fee simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain property situate, lying and being in the County of Solano, State of California, more particularly described as follows, to-wit:

> All that portion of the West half of Section 31, T. 4 N. R. 4 W., lying South of South Slough and within Solano County.
>
> Also the fractional West half of Section 6, T. 3 N. R. 4 W., lying within the boundary of Swamp & Overflowed Land No. 569; said parcels being a portion of Swamp and Overflowed Lands, Survey No. 569 and situate on Cross Island.

Excepting therefrom the following described premises known as Sears Point Toll Road, described as follows: Beginning at the point of intersection of the easterly boundary line of the West ½ of fractional Section 6, with the surveyed line of said Toll Road, said point being Engineer's Station 220 + 91.13 of said surveyed line and running thence N. 65° 50′ 30″ W. 311.56 feet to Engineer's Station 224 + 02.69; thence along a curve to the left of radius of 20,000 feet 523.60 feet to Engineer's Station 229 + 26.29; thence N. 67° 20′ 30″ W. 939.15 feet to Engineer's Station 238 + 65.44; thence along a curve to the right of radius of 2000 feet; 379.12 feet to Engineer's Station 242 + 44.56; thence N. 56° 29′ 10″ W. 815.87 feet to Engineer's Station 250 + 60.43, being a point on the westerly boundary line of fractional Section 6, from which the meander corner of Lot 1, Section 6, T. 3 N. R. 4 W., M.D.B. & M., bears S. 0° 01′ E. 352.63 feet along said Section line, said strip of land containing 6.82 acres, more or less. Excepting also that portion lying within the County Road.

Defendant Pacific Gas and Electric Company claims to be the owner of the right of way and easement for transmission line purposes, over the above-described land, granted by that certain right of way deed, given by Lester E. Cross, dated May 8, 1911, referred to above in the description of the claim of James Irvine.

The Court finds the fact to be that neither the defendant Mary W. Stewart nor the defendant Pacific Gas and Electric Company has any right, title, or interest in the above-described land, and the plaintiff, the United States of America, is the owner thereof in fee [196] simple absolute.

(3) Claim of Defendant Sears Point Toll-Road Co.

The defendant, Sears Point Toll-Road Co., claims to be the owner in fee simple absolute (subject to the Trust Indenture and Supplemental Trust Indenture to defendant American Trust Company hereinafter mentioned) of all that certain real property situate, lying and being in the County of Solano, State of California, more particularly described as follows:

Parcel "D":

Tract (1) Beginning at the Meander corner of the United States Public Land Surveys, common to Tract No. 38 (Mare Island Navy Yard) and fractional Section 10 T. 3 N. R. 4 W. Mount Diablo Base and Meridian, on the westerly bank of Napa River; and running thence S. 64° 45′ W. 1090.32 feet along the Northern boundary line of said Tract No. 38 to an angle point in said boundary line; thence continuing along said boundary line N. 89° 56′ 30″ W. 1980 feet to the most northwesterly corner of said Tract No. 38; thence, leaving said boundary line, N. 0° — 03′ 30″ E. 170.42

feet to a point 95 feet northerly at right angles from the surveyed line for the Toll Road of Sears Point Toll Road Co. at Engineers Station 58 + 72.79 thereof; thence S. 89° — 56′ — 30″ E. 1416.69 feet; thence along a curve to the left of radius 870 feet, 384.13 feet; thence North 64° — 45′ E. to the line of mean lower low water along the westerly bank of Napa River; thence southerly along said line of mean lower low water to the point of intersection thereof with a line extending N. 64° 45′ E. through said meander Corners and thence S. 64° — 45′ W. along the last described line extending through said Meander Corner to the point of beginning; containing 15.09 acres (more or less); and being a portion of said fractional section 10 and the accretion on the Napa River frontage, and being a portion of Swamp and Overflow Land Survey No. 569, Solano County, California.

Tract (2) A strip of land of the uniform width of 160 feet, described as follows, to-wit:

Beginning at a point 65′ distant, measured southerly at right angles to the surveyed line hereinafter described, from Engineers Station 58 + 72.79 of the surveyed line for the Toll Road of Sears Point Toll Road Co., said point being N 0° — 03′ — 30″ E. 10.42 feet distant from the most northwesterly corner of Tract 38, U. S. Public Land Surveys (Mare Island Navy Yard) and being on the westerly bound-

ary of Tract No. 1, hereinabove described; and running thence parallel to said surveyed line, N. 89° — 56′ 30″ W. 1431.84 feet to a point from which the corner common to fractional sections 9, 10, 15 and 16, T. 3 N. R. 4 W. M.D.B. & M., bears S. 0° — 03 — ½′ W. 1281.05 feet distant; thence [197] continuing on the same course, N. 89° — 56′ 30″ W. 1175.70 feet; thence westerly along a curve to the right having a radius of 1030 feet, for a distance of 577.05 feet; thence N. 32° — 09′ 30″ E. 160 feet; thence easterly along a curve to the left for a distance of 487.42 feet, said curve having a radius of 870 feet, and being parallel to the southerly boundary above described; thence S. 89° 56′ 30″ E. 2607.54 feet, to a point 95′ distant, measured at right angles to said surveyed line, northerly from said Engineers Station 58 + 72.79 of said surveyed line; thence southerly 160 feet at right angles to said surveyed line to the point of beginning; situate in and being a part of fractional section 9 and 10, T. 3 N., R. 4 W. M.D.B. & M., and being a part of Swamp and Overflow Land Survey No. 569, Solano County, California, and containing 11.64 acres (more or less).

Tract (3) Beginning at the most southwesterly corner of Tract 2 of Parcel D described above; and running thence N 32° 09′ 30″ E. along the westerly boundary of said Tract No. 2, for a distance of 130 feet to a point on said

boundary; thence N 57° 50′ 30″ W. 2455.46 feet; thence along a curve to the left having a radius of 10,100 feet for a distance of 540.59 feet; thence N 60° 54′ 30″ W. 2149.57 feet; thence along a curve to the left having a radius of 20,100 feet for a distance of 321.58 feet; thence N. 61° 49′ 30″ W. 1622.51 feet; thence along a curve to the left having a radius of 20,100 feet for a distance of 923.84 feet; thence N. 64° 27′ 30″ W. 986.52 feet; thence along a curve to the right having a radius of 9,900 feet for a distance of 492.45 feet; thence N. 61° 36′ 30″ W. 1332.62 feet to a point which bears N. 28° 23′ 30″ E. 100 feet distant from Engineers Station 198 + 67.0 of the survey for Toll Road as surveyed for Sears Point Toll Road Co., thence S. 28° 23′ 30″ W. 130 feet; thence S. 61° 36′ 30″ E. 1332.62 feet; thence along a curve to the left having a radius of 10,030 feet for a distance of 498.91 feet; thence S. 64° 27′ 30″ E. 986.52 feet; thence along a curve to the right having a radius of 19,970 feet for a distance of 917.86 feet; thence S. 61° 49′ 30″ E. 1622.51 feet; thence along a curve to the right having a radius of 19,970 feet for a distance of 318.49 feet; thence S 60° 54′ 30″ E. 2149.57 feet; thence along a curve to the right having a radius of 9,970 feet for a distance of 533.63 feet; thence S. 57° 50′ 30″ E. 2455.46 feet to the point of beginning; said parcel being a strip of land of a uniform width of 130 feet extend-

ing from the westerly boundary of Tract No. 2, hereinbefore described, to a line at right angles to the surveyed line of Toll Road for Sears Point Toll-Road at Engineers Station 198 + 67 thereof, and said Tract No. 3, containing 32.29 acres more or less.

Tract (4) A strip of land of the uniform width of 160 feet, extending from the westerly boundary line of Tract No. 3, hereinbefore described, which is a line at right angles to the surveyed line for the Toll Road of Sears Point Toll Road Co. at Engineers Station [198] 198 + 67 thereof, to the westerly boundary line of the lands now or formerly belonging to Eva L. Ricks, said boundary line of the lands of Eva L. Ricks being the easterly boundary line of the West one-half of fractional section 6 T. 3 N. R. 4 W. Mount Diablo Base and Meridian, and is the division line between said lands of Eva L. Ricks and lands now or formerly belonging to Henry Claude Kettleman, the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from said surveyed line for Toll Road between said line at right angles to said surveyed line of Engineers Station 198 + 67 and said easterly boundary line of the West one-half of fractional section 6, the point of intersection of said one-half section line and said surveyed line for Toll Road being Engineers Station 220 + 91.13 thereof, the northerly boundary line of said

strip being parallel to and 130 feet distant at right angles northerly from said surveyed line for Toll Road between said line at right angles to said surveyed line at Engineers Station 198 + 67 and said easterly boundary line of the West one-half of fractional section 6; said strip of land containing 8.17 acres (more or less) situate in and being a part of the East one-half of said fractional section 6 T. 3 N. R. 4 W. Mount Diablo Base and Meridian and of Swamp Overflow Land Survey No. 569, Solano County, California; the portion of said surveyed line hereinabove mentioned being described as follows, to-wit: Beginning at Engineers Station 198 + 67 and running thence N. 61° 30″ W. 433.40 feet to Engineers Station 202 + 90.40; thence northwesterly along a curve to the left, of radius 2000 feet, 244.93 feet to Engineers Station, 205 + 35.33; thence N. 68° 37′ 30″ W. 718.34 feet to Engineers Station 212 + 53.67; thence northwesterly along a curve to the right, of radius 10,000 feet, 485.75 feet to Engineers Station 217 + 39.42; thence N. 65° 30′ 30″ W. 351.71 feet to Engineers Station 220 + 91.13 a point on the easterly line of the West one-half of fractional section 6 T. 3 N. R 4 W. Mount Diablo Base and Meridian; the beginning point of the above described portion of said survey line for Toll Road being located and defined as follows, to-wit: Commencing at the meander corner com-

mon to fractional sections 5 and 6 T. 3 N. R. 4 W. Mount Diablo Base and Meridian; and running thence N. 0° 06′ W. 403.5 feet to Engineers Station 191 + 68.70 of said surveyed line for Toll Road, thence along said surveyed line N. 61° 36′ 30″ W. 698.30 feet, to said Engineers Station 198 + 67, to the point of beginning.

Parcel "E": A strip of land of the uniform width of 100 feet extending from the easterly boundary line of the West ½ of fractional Section 6, T. 3 N. R. 4 W. M. D. M., to the westerly boundary line thereof, the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from the surveyed line for the Toll Road of Sears Point Toll Road Co. and the northerly boundary line of said strip being parallel to and 70 feet distant at right angles northerly from said surveyed line of Toll Road, said [199] surveyed line for Toll Road of Sears Point Roll Road Co. being as described in the survey and description of the route and of the land necessary for the said Toll Road, recorded by the Commissioners in the Matter of the said Toll Road in the Office of the County Clerk of Solano County, California, April 15th, 1926, and reported to and approved by the Board of Supervisors of said Solano County on the said 15th day of April, 1926, and entered of record in the journal of the said Board of Supervisors, the portion of

said surveyed line hereinabove referred to being described as follows, to-wit:

"Beginning at a point of intersection of said easterly boundary line of the West ½ of fractional section 6, with said surveyed line, said point being Engineers' Station 220 + 91.13 of said surveyed line, and running thence N. 65° 50′ 30″ W. 311.56 feet to Engineers' Station 224 + 02.69, thence along a curve to the left of radius 20,000 feet, 523.60 feet to Engineers' Station 229 + 26.29, thence N. 67° 20′ 30″ W. 939.15 feet to Engineers' Station 238 + 65.44, thence along a curve to the right of radius of 2000 feet, 379.12 feet to Engineers' Station 242 + 44.56, thence N. 56° 29′ 10″ W. 815.87 feet to Engineers' Station 250 + 60.43 being a point on said westerly boundary line of fractional section 6, from which the meander corner of Lot 1, Sec. 6, T. 3 N. R. 4 W. M. D. B. & M., bears S. 0° 01′ E. 352.63 feet along said Section line, said strip of land containing 6.82 acres, more or less.

Parcel "F": A strip of land of the uniform width of 100 feet extending from the westerly boundary line of Fractional Section 6, T. 3 N. R. 4 W., M. D. B. & M., to the easterly boundary line of lands now or formerly belonging to Bay Land Company, the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from the surveyed line for the Toll Road of Sears Point Toll Road Co.

and the northerly boundary line of said strip being parallel to and 70 feet distant at right angles northerly from said surveyed line for Toll Road, said surveyed line for Toll Road of Sears Point Toll Road Company being as described in the survey and description of the route and of the land necessary for the said Toll Road, recorded by the Commissioners in the matter of the said Toll Road, in the Office of the County Clerk of Solano County, California, April 15, 1926, and reported to and approved by the Board of Supervisors of said Solano County of the said 15th day of April 1926, and entered of record on the journal of the said Board of Supervisors, the portion of said surveyed line hereinabove referred to being described as follows, to-wit: [200]

Beginning at the point of intersection of said westerly boundary line of fractional section 6 which line bears S 0° 01′ E. with said surveyed line for Toll Road at Engineers' Station 250 + 60.43 thereof from which Station the meander corner of Lot 1, Sec. 6, T. 3 N. R. 4 W., M.D.B. & M., bears S 0° 01′ E. 352.63 feet distant, and running thence along said surveyed line N 56° 29′ 10″ W. 127.57 feet to Engineers' Station 251 + 88, thence along a curve to the left of radius 2000 feet, 68.55 feet to Engineers' Station 252 + 56.55 being a point on the said easterly boundary line of lands now or formerly belonging to Bay Land Company, which

line bears N 0° 07½′ W. said strip of land containing 0.45 acres, more or less.

Parcel "G": A strip of land of the uniform width of 100 feet extending from the westerly boundary line of lands now or formerly belonging to John C. Brickell which line bears N 0° 07½′ W. to the easterly boundary line of lands now or formerly belonging to Field and Tule Land Company which line bears N 0° 32½′ W. the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from the surveyed line for the Toll Road of Sears Point Toll Road Company, and the northerly boundary line of said strip of land being parallel to and 70 feet northerly at right angles from said surveyed line for Toll Road; said surveyed line for Toll Road of Sears Point Toll Road Co. being as filed in the office of the County Clerk of Solano County, California, on the 15th day of April, 1926, the portion of said surveyed line hereinabove referred to being described as follows, to-wit:

Beginning at Engineers Station 252 + 56.35 being a point on said westerly boundary line of lands of John C. Brickell and running thence along a curve to the left of radius 2000 feet, 293.71 feet to Engineers Station 255 + 50.06; thence N 66° 51′ 30″ W., 2929.94 feet to Engineers Station 284 + 80, being a point on said easterly boundary line of lands of Field and Tule Land Company; said strip of land con-

taining 7.40 acres (more or less) situated in and being a portion of Swamp and Overflow Land Survey No. 569, Solano County, California, said point of beginning, station 252 + 56.35 being located and defined as follows, to-wit: Commencing at the Meander Corner common to fractional section 6, T. 3 N. R. 4 W., and fractional section 1, T. 3 N. R. 5 W., Mount Diablo Base and Meridian and running thence N 0° 01′ W., 352.63 feet to Engineers Station 250 + 60.43 of said surveyed line of Toll Road, thence along said line N 56° 29′ 10″ W. 127.57 feet to Engineers Station 251 + 88; thence along a curve to the left of radius 2000 feet, 68.55 feet to said point of beginning, also the right to take from the 60 feet next adjoining the North boundary of said right of way, the material necessary for road construction and maintenance. [201]

Parcel "H": Tract (1) A strip of land of the uniform width of 100 feet extending from the westerly line of lands now or formerly belonging to Bay Land Company, which line bears North 0° 32½′ West, to the easterly line of lands now or formerly belonging to West End Land Company, which line bears North 0° 7½′ West, the southerly boundary line of said strip being parallel to and thirty feet distant at right angles southerly from the surveyed line for the Toll-Road of Sears Point Toll-Road Co., and the northerly boundary line of said

strip being parallel to and 70 feet distant at right angles northerly from said surveyed line for Toll Road, the portion of said surveyed line hereinabove referred to being described as follows, to-wit: Beginning at the point of intersection of said westerly line of land of Bay Land Company with said surveyed line at Engineers Station 284. + 80 thereof, and running thence North 66° 51′ 30″ West 167.89 feet to Engineers Station 286 + 47.89, thence along a curve to the right having a radius of 2000 feet for a distance of 270.43 feet to Engineers Station 289 + 18.32, thence North 59° 06′ 40″ West, 817.35 feet to Engineers Station 297 + 35.67, thence along a curve to the left having a radius of 2000 feet for a distance of 430.15 feet to Engineers Station 301 + 65.82; thence North 71° 26′ West 1527.36 feet to Engineers Station 316 + 93.18, thence along a curve to the right having a radius of 1000 feet for a distance of 365.96 feet to Engineers Station 320 + 59.14, thence North 50° 28′ West 336.31 feet to Engineers Station 323 + 95.45, thence along a curve to the left having a radius of 3000 feet for a distance of 352.99 feet to Engineers Station 327 + 48.44, thence North 57° 12′ 30″ West 1014.2 feet to Engineers Station 337 + 62.64, being a point on said easterly line of lands of West End Land Company, said point of beginning being located and defined as follows, to-wit: Commencing at the meander corner

common to fractional Section 6, Township 3 North, Range 4 West and fractional Section 1, Township 3 North, Range 5 West, Mount Diablo Base and Meridian, and running thence North 0° 01′ West 352.63 feet to Engineers Station 250 + 60.43 on said surveyed line of Toll-Road, thence along said surveyed line North 56° 29′ 10″ West 127.57 feet to Engineers Station 251 + 88, thence along a curve to the left having a radius of 2000 feet for a distance of 362.06 feet to Engineers Station 255 + 50.06, thence North 66° 51′ 30″ West, 2929.94 feet to Engineers Station 284 + 80, being said point of beginning, said strip of land containing 12.12 acres (more or less) situate in and being a portion of Swamp and Overflow Land Survey No. 569, Solano County, California.

Tract (2) The right or easement to take earth and soil for the construction, maintenance and repair of the Toll Road to be constructed by Sears Point Toll-Road Co.,—extending along the property described as [202] "Tract (1) of Parcel "H" above, from that certain parcel of land described as follows, to-wit:

A strip of land of the uniform width of 60 feet, extending the entire length of the property above described, the southerly boundary of said strip of land being the northerly boundary of "Tract (1) of Parcel "H" above described, and the northerly boundary of said strip of

land hereby described being parallel to and 60 feet distant at right angles northerly at all points from said northerly boundary of (Tract (1) of Parcel "H" above described); containing 7.28 acres, more or less.

Parcel "I": All that portion of that certain real property situated in the County of Solano, State of California, described as follows, to-wit:

Tract (1) A strip of land of the uniform width of 100 feet extending from the westerly boundary line of the lands now or formerly belonging to the Field and Tule Land Company, which line bears N 0° 07½′ West to the line of mean lower low water in Sonoma Creek, the southerly boundary of said strip of land being parallel to and thirty feet distant at right angles southerly from the surveyed line for the Toll-Road of Sears Point Toll Road Co., and the northerly boundary of said strip of land being parallel to and distant one hundred feet at right angles northerly from said southerly boundary of the herein described strip of land, the portion of said surveyed line hereinabove referred to being described as follows, to-wit: Beginning at the point of intersection of the westerly line of said lands now or formerly belonging to Field and Tule Land Company with the said surveyed line of Toll-Road at Engineers Station "C" 337 + 62.64, and running thence North 57° 12′ 30″ W. 1205.92 feet to Engineers Station "C" 349 + 68.56, thence

along a curve to the left having a radius of 3000 feet for a distance of 635.23 feet to Engineers Station "C" 356 + 03.79 which equals Station 356 + 18.87, thence North 69° 20′ 30″ West, 194.25 feet to Engineers Station 358 + 13.12, thence along a curve to the left, having a radius of 2000 feet, for a distance of 92.02 feet to Engineers Station 359 + 05.14, thence North 71° 58′ 40″ West 1326.40 feet to Engineers Station 372 + 31.54, thence along a curve to the left having a radius of 2000 feet for a distance of 157.46 feet to Engineers Station 373 + 89, thence North 76° 29′ 20″ West, 1981.20 feet to Engineers Station 393 + 70.20, thence along a curve to the right having a radius of 2000 feet for a distance of 457.67 feet to Engineers Station 398 + 27.87, thence North 63° 22′ 40″ West, 1034.44 feet to Engineers Station 408 + 62.31, thence along a curve to the left having a radius of 1000 feet for a distance of 471.33 feet to Engineers Station 413 + 33.64, thence South 89° 37′ West parallel to the northerly boundary of Solano County, 48.42 feet to Engineers Station 413 + 82.06, which equals Station 413 + 91.11, from which Station a 6″ x 6″ post on said County boundary bears North 43° 34′ West, 86.2 feet; [203] thence continuing on said course South 89° 37′ West parallel to and distant 62 feet at right angles southerly from said northerly boundary line of Solano County to the line of mean lower low water on the easterly

side of Sonoma Creek, the beginning point of said portion of surveyed line, Station 337 + 62.64, being located and defined as follows, to-wit: Commencing at the meander corner on the westerly boundary line of fractional section 6, T 3 N, R 4 W, Mount Diablo Base and Meridian, and running thence North 0° 01′ West, 352.63 feet to Engineers Station 250 + 60.43, on said surveyed line of Toll-Road, thence along said surveyed line North 56° 29′ 10″ West, 127.57 feet to Engineers Station 251 + 88, thence along a curve to the left having a radius of 2000 feet for a distance of 362.06 feet to Engineers Station 255 + 50.06, thence North 66° 51′ 30″ West, 3097.83 feet to Engineers Station 286 + 47.89, thence along a curve to the right having a radius of 2000 feet for a distance of 270.43 feet to Engineers Station 289 + 18.32; thence North 59° 06′ 40″ West, 817.35 feet to Engineers Station "C" 297 + 35.67, thence along a curve to the left having a radius of 2000 feet for a distance of 430.15 feet to Engineers Station "C" 301 + 65.82, thence North 71° 26′ West 1527.36 feet to Engineers Station "C" 316 + 93.18, thence along a curve to the right having a radius of 1000 feet for a distance of 365.96 feet, to Engineers Station "C" 320 + 59.14, thence North 50° 28′ West 336.31 feet to Engineers Station "C" 323 + 95.45, thence along a curve to the left having a radius of 3000 feet for a distance of 352.99 feet

to Engineers Station "C" 327 + 48.44, thence North 57° 12′ 30″ West, 1014.20 feet to Engineers Station "C" 337 + 62.64, being a point on the easterly line of lands of West End Land Company, and being said point of beginning; said above described strip of land containing 18.20 acres (more or less) situate in and being a part of Swamp and Overflow Survey No. 569, Solano County, California.

Tract (2) The right or easement to take earth and soil for the construction, maintenance and repair of the Toll-Road to be constructed by Sears Point Toll-Road Co., extending along the property described in Tract (1) of Parcel "I" above, from that certain parcel of land described as follows, to-wit:

A strip of land of the uniform width of 60 feet extending from the westerly boundary line of lands now or formerly belonging to the Field and Tule Land Company, which line bears North 0° 7½′ West, to the line of mean lower low water in Sonoma Creek, the southerly boundary line of said strip of land being the northerly boundary of Tract (1) in Parcel "I" above described, and the northerly boundary of said strip of land hereby described being parallel to and 60 feet distant at right angles northerly at all [204] points from the above described southerly boundary of said strip of land hereby described, containing 10.92 acres, more or less.

The defendant American Trust Company, claims to be the owner and holder of the interest in the above-described real property conveyed to it under that certain Trust Indenture, from Sears Point Toll-Road Co., to American Trust Company, dated June 1, 1926, and recorded March 1, 1927, in the Office of the County Recorder of the County of Solano, California, and by virtue of that certain Supplemental Trust Indenture, dated June 1, 1927, and recorded June 29, 1927, in the Office of said County Recorder of Solano County, California.

The Court finds the fact to be that neither the defendant Sears Point Toll-Road Co., nor the defendant American Trust Company have any right, title, or interest in the above-described real property, and that the plaintiff, The United States of America, is the owner of the whole thereof in fee simple absolute.

(4) Claim of Defendant Bay Land Company.

Defendant Bay Land Company claims to be the owner in fee simple absolute (subject to the easement and right of way hereinafter mentioned) of all that certain real property situate, lying and being in the Counties of Napa and Solano, California (excepting from the land described those portions thereof lying in Section 25, Township 4 North, Range 5 West, and Section 30, Township 4 North, Range 4 West, M.D.B. & M.), to-wit:

> Beginning at a point on the boundary line between Solano and Napa Counties, which point is on the West line of Section 31, Township 4

North, Range 4 West, Mount Diablo Base and Meridian, as said section line was re-established by E. N. Eager, County Surveyor, in February 1915, and is 397.25 chains West of the West of the West line of Section 36, in Township 4 North, Range 4 West, Mount Diablo Base and Meridian; thence from said point of beginning South 102.90 chains to the shore of San Pablo Bay; thence along said shore line in a westerly direction about 48 chains to a point which is 44.00 chains West of the West line of said Section 31; thence North 0° 25′ West 66.40 chains to the middle of South Slough, at a point which is 44.50 chains west [205] of the West line of said Section 31; thence along the middle of said South Slough in a northerly direction about 18 chains to the County boundary line; thence follow the middle of said South Slough, northerly, easterly and southerly about 150 chains to said County boundary line again; thence along same North 89° 25′ West 14.50 chains to the place of beginning. Containing 630.50 acres, more or less.

Excepting therefrom that portion of the above described tract heretofore conveyed to Sears Point Toll-Road Co.

Defendant Pacific Gas and Electric Company claims to be the owner of the right of way and easement for transmission lines purposes over the above-described lands granted to it by that certain deed

from Lester E. Cross, dated May 8, 1911, referred to above in the description of the claim of James Irvine.

The Court finds the fact to be that neither the defendant Bay Land Company, nor the defendant Pacific Gas and Electric Company, has any right, title, or interest in the above described land, and that the plaintiff, the United States of America, is the owner thereof in fee simple absolute.

(5) Claim of Defendant Field and Tule Land Company.

Defendant Field and Tule Land Company claims to be the owner in fee simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain property situate, lying and being in the Counties of Napa and Solano, California, more particularly described as follows (excepting from the land described that portion thereof lying in Section 25, Township 4 North, Range 5 West, M.D.B. & M.), to-wit:

> Commencing at a point on the boundary line between said Solano and Napa Counties, which point is 154.25 chains West of the quarter-section line running North and South through the middle of Section 31, Township 4 North, Range 4 West, Mount Diablo Base and Meridian, which said quarter-section line was re-established by E. N. Eager, County Surveyor, in February, 1915, and is 357.25 chains West of the West line of Section 36, Township 4 North, [206] Range 4 West, Mount Diablo Base and

Meridian; thence from said point of commencement North 14.40 chains to the South bank of Huichica Creek; thence along the same in an easterly direction about 63 chains to the middle of South Slough; thence along said South Slough, southerly and easterly about 42 chains to a point which is 84.50 chains West of said quarter-section line running North and South through the middle of said Section 31; thence South 0 degrees 25 minutes E. 66.40 chains to the shore of San Pablo Bay; thence along said shore line northwesterly about 81 chains to the southeasterly corner of that certain 472.46 acre tract of land conveyed by John C. Brickell (an unmarried man) to Bay Land Company, a corporation, by deed dated May 20, 1921, and recorded in the office of the County Recorder of the County of Solano on June 17, 1921, in Liber 254 of Deeds at page 453 and also recorded in the office of the County Recorder of the County of Napa on June 21, 1921, in Liber 132 of Deeds at page 260, and thence North and along the East boundary of land so conveyed to Bay Land Company 45 chains to the point of commencement, containing 500 acres.

Excepting therefrom that portion of the above described tract heretofore conveyed to Sears Point Toll-Road Co.

Defendant Pacific Gas and Electric Company claims to be the owner of the right of way and ease-

ment for transmission lines purposes over the above-described lands granted to it by the right of way deed given by Lester E. Cross, May 8, 1911, referred to above in the description of the claim of James Irvine.

The Court finds the fact to be that neither the defendant Field and Tule Land Company, nor the defendant Pacific Gas and Electric Company, has any right, title, or interest in the above-described land, and that the plaintiff, the United States of America, is the owner thereof in fee simple absolute.

(6) Claim of Defendant West End Land Company.

The defendant West End Land Company, claims to be the owner in fee simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain real property situate, lying and being in the Counties of Napa and Solano, California, more particularly described as follows, to-wit: [207]

Beginning at a point on the boundary line between Solano and Napa Counties, which point is 154.25 chains West of the quarter Section line running North and South through the middle of Section 31, Township 4 North, R. 4 West, M.D.B. & M., and which quarter section line was re-established by E. N. Eager, County Surveyor in February, 1915, and is 357.25 chains West of the West line of Section 36, in Township 4 North, Range 4 West, M.D.B. & M.,

thence from said point of beginning, North 14.40 chains to the South bank of the Huichica Creek; thence along same westerly about 125 chains to the County boundary line, at a point about 1.75 chains West of a County boundary post and about 109.17 chains westerly from the point of beginning; thence along the shore line of San Pablo Bay, southeasterly about 120 chains and thence North about 45 chains to the place of beginning, containing 472.46 acres, more or less.

Excepting therefrom property sold to Sears Point Toll Road Co., by deed dated November 19, 1926, and recorded April 1, 1927, in Book 288 of Deeds, page 446, described as follows:

Parcel No. 1: A strip of land of the uniform width of 100 feet extending from the westerly boundary line of the lands now or formerly belonging to the Field and Tule Land Company, which line bears N. 0° 07½′ W. to the line of a mean low water in Sonoma Creek, the southerly boundary of said strip of land being parallel to and 30 feet distant at right angles southerly from the surveyed line for the toll road of Sears Point Toll Road Co., and the northerly boundary of said strip of land being parallel to and distant 100 feet at right angles northerly from said southerly boundary of the herein described strip of land, the portion of said surveyed line hereinabove referred to being described as follows, to-wit:

Beginning at the point of intersection of the westerly line of said lands now or formerly belonging to Field and Tule Land Company with the said surveyed line of Toll-Road at Engineers Station "C" 337 + 62.64 and running thence N. 57° 12' 30" W. 1205.92 feet to Engineer's Station "C" 349 + 68.56; thence along a curve to the left, having a radius of 3000 feet for a distance of 635.23 feet to Engineer's Station "C" 356 + 03.79 which equals Station 356 + 18.87; thence N. 69° 20' 30" W. 194.25 feet to Engineers Station 358 + 13.12; thence along a curve to the left having a radius of 2000 feet, for a distance of 92.02 feet to Engineers Station 359 + 05.14; thence N. 71° 58' 40" W. 1326.40 feet to Engineers Station 372 + 31.54; thence along a curve to the left having a radius of 2000 feet for a distance of 157.46 feet to Engineers Station 373 + 89; thence N. 76° 29' 20" W. 1981.20 feet to Engineers Station 393 + 70.20; thence along a curve to the right having a radius of 2000 feet for a distance of 457.67 feet to Engineers Station 398 [208] + 27.87; thence N. 63° 22' 40" W. 1034.44 to Engineers Station 408 + 62.31; thence along a curve to the left having a radius of 1000 feet for a distance of 471.33 feet to Engineers Station 413 + 33.64; thence S. 89° 37' W. parallel to the northerly boundary of Solano Co., 8.42 feet to Engineers Station 413 + 82.06, which equals Station 413 + 91.14 from which Station a 6"

x 6" post on said County boundary bears N. 43° 34' W. 86.2 feet; thence continuing on said course S. 89° 37' West parallel to and distant 62 feet at right angles southerly from said northerly boundary line of Solano County to the line of mean low water on the easterly side of Sonoma Creek, the beginning point of said portion of Surveyed line, Station 337 + 62.64 being located and defined as follows, to-wit:

Commencing at the meander corner on the westerly boundary line of fraction Section 6, T. 2 N. R. 4 W. M.D.B. & M., and running thence N. 0° 01' W. 352.63 feet to Engineers Station 250 + 60.43 on said surveyed line of Toll Road; thence along said surveyed line N. 56° 29' 10" W. 127.57 feet to Engineers Station 251 + 88; thence along a curve to the left having a radius of 2000 feet for a distance of 362.06 feet to Engineers Station 255 + 60.06; thence N. 66° 51' 30" W. 3097.83 feet to Engineers Station 286 + 47.89; thence along a curve to the right having a radius of 2000 feet for a distance of 270.43 feet to Engineers Station 289 + 18.32; thence N. 59° 06' 40" W. 817.35 feet to Engineers Station "C" 297 + 35.67; thence along a curve to the left having a radius of 2000 feet for a distance of 430.15 feet to Engineers Station "C" 301 + 65.82; thence N. 71° 26' W. 1527.36 feet to Engineers Station "C" 316 + 93.18; thence along a curve to the right having a radius of 1000 feet for a distance of 365.96

feet to Engineers Station "C" 320 + 59.14; thence N. 50° 28′ W. 336.31 feet to Engineers Station "C" 323 + 95.45; thence along a curve to the left having a radius of 3000 feet, for a distance of 352.99 feet to Engineers Station "C" 327 + 48.44; thence N. 57° 12′ 30″ W. 1014.20 feet to Engineers Station "C" 337 + 62.64 being a point on the easterly line of lands of West End Land Company, and being said point of beginning, said above described strip of land containing 18.20 acres, more or less, situate in and being a part of Swamp and Overflowed Survey No. 569, Solano County, Cal.

Also Excepting Parcel #2. The right or easement to take earth and soil for the construction, maintenance and repair of the Toll-Road to be constructed by the party of the first part, extending along the property described in Parcel 1 above, from that certain parcel of land described as follows, to-wit:

A strip of land of the uniform width of 60 feet extending from the westerly boundary line of land now or formerly belonging to the Field and Tule Land Company, which line bears N. 0° 7½′ W. to the line of [209] mean low water in Sonoma Creek, the southerly boundary line of said strip of land being the northerly boundary of Parcel 1 above described, and the northerly boundary of said strip of land hereby described being parallel to and 60 feet distant at

right angles northerly at all points from the above described southerly boundary of said strip of land hereby described, containing 10.92 acres, more or less.

Defendant Pacific Gas and Electric Company, claims to be the owner of the right of way and easement for transmission lines purposes over the above described lands granted to it by that certain right of way deed given by Lester E. Cross, referred to in the description of the claim of James Irvine.

The Court finds the fact to be that neither the defendant West End Land Company, nor the defendant Pacific Gas and Electric Company, has any right, title, or interest in the land described above, and that the plaintiff, the United States of America, is the owner thereof in fee simple absolute. [210]

EXHIBIT B

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN UNITED STATES v. O'DONNELL, NO. 2787-S RELEVANT TO THE ISSUE IN UNITED STATES v. MARY W. STEWART AS TO WHAT LANDS CONSTITUTED MARE ISLAND.

IV(a)

In July, 1877, the Surveyor General of California in compliance with the 13th section of the Act entitled "An Act to ascertain and settle the private land claims in the State of California", approved

March 3, 1851, caused said private land claim for Mare Island to be surveyed and a plat to be made thereof, and thereafter gave due notice that same had been done by publication once a week for four consecutive weeks in two newspapers, one published in the City of San Francisco, to-wit, "The Alta California" and one published near the Land Surveyor, "The Vallejo Evening Chronicle", published in the City of Vallejo, County of Solano, State of California, and retained in his office for public inspection the survey and plat until ninety days from the date of the first publication in San Francisco expired; that no objections were made to said survey and the said Surveyor General of California duly approved the same and transmitted a copy of the survey and plat thereof to the Commissioner of the General Land Office at Washington, for his examination and approval. Thereafter the Commissioner of the General Land Office duly approved said survey and plat and caused the same to be filed in a jacket called "The Mare Island Jacket" in the file of military reservations in the General Land Office; thereafter on September 22, 1905, the Commissioner of the General Land Office expressly approved, used and acted on said survey and plat and thereafter, on September 28, 1905, the Secretary of the Interior expressly approved and concurred in said action of the Commissioner of the General Land Office, and approved, used and acted on said survey and plat. [21]

VII.

On February 9, 1853, the Secretary of the Navy of the United States of America, acting under and in pursuance of section 3 of the Act of August 31, 1852, (10 Stats. 104), duly selected the tract of land in the Bay of San Francisco bounded by the Bay of San Pablo, the Straits of Carquinez, and Napa Creek, known as Mare Island, together with all its appendages of tule or marsh land ordinarily reported to belong to said island, and the harbors, waters and anchorages connected therewith, and necessary to the use of the same and within which is included the lands and premises described in paragraph II of the Bill of Complaint herein, as a site for a Navy Yard and Naval Depot provided for by said Act of Congress.

Following said selection the Secretary of the Navy on February 9, 1853, recommended to the President of the United States that said lands and premises be reserved for public use, and on February 11, 1853, President Millard Fillmore duly approved said recommendation and made said reservation and said reservation was communicated to the Secretary of the Interior and properly recorded.

A copy of the aforementioned selection of said tract and recommendation of the Secretary of the Navy, together with the approval of the President of the United States and his order making such reservation is attached to the Bill of Complaint marked Exhibit "D" and referred to and incorporated therein.

From time to time Congress of the United States of America duly approved, ratified and confirmed said reservation and by various statutes appropriated large sums to improve the lands comprised therein and authorized their improvement. [212]

VIII.

The lands and premises described in paragraph II of Bill of Complaint are included within the boundaries and are a part of the lands and premises described and conveyed by said grant of Juan B. Alvarado, Governor of California, under the rule and occupancy of Mexico, to Victor Castro, confirmation of which grant was made by the Board of Land Commissioners and by the United States District Court as aforesaid, to George W. P. Bissell and William H. Aspinwall, and are included within the boundaries of and are a part of the lands and premises purchased by the United States from said Bissell and Aspinwall and their co-grantor Mary S. McArthur, as hereinbefore alleged.

XVI.

It is not true that the proceeding to confirm the said grant of Mare Island to said Castro and his mesne successors had terminated on June 4, 1853, by their conveyance of said premises to plaintiff or plaintiff's acceptance of the same, and it is true that the said granted premises included Mare Island to the water's edge, but it is not true that it did not include any portion of the premises sought to

be described, delineated and depicted in State Segregation Surveys Nos. 34 or 569, or either of them, or any land north of a line drawn from Station 54 to Station 138 as depicted in Freeman's survey of 1877.

XX.

It is not true that the premises described in paragraph II of plaintiff's Complaint are a part of any Island No. 1 embraced in said Surveys Nos. 34 or 569 as [213] depicted on the official maps of plaintiff, copies of which, marked respectively "A" and "B" are attached to the joint answer of defendants filed March 31, 1931, and therein referred to and incorporated, or as reported or depicted in any approved survey and plat of Township 4 North, Range 4 West, M. D. B. & M., accepted November 8, 1923, were on September 28, 1850, or at any time or at all, or ever, a part of the public domain of the United States, or swamp and overflowed lands embraced in Swamp and Overflowed Land Grant to California at that date.

It is not true that said premises or any part thereof were not within the exterior boundaries of Mare Island or were north of the northern boundary of Mare Island as established officially by United States Surveyor General Wagner, or anyone, within his jurisdiction to so establish; that Exhibit "M" attached to and made a part of said answer of March 31, 1931, was neither a decision, nor within the jurisdiction, of United States Surveyor General Wagner; that Surveyor General

Wagner had no power to alter or modify said survey of Freeman.

XXV.

It is true that Exhibit "A" attached to defendants' Answer is a Coast Survey Chart, and Exhibit "B" attached to said Answer a Geological Survey Chart, and Exhibit "H" attached to said Answer an alleged township plat of 4 North, Range 4 West, M. D. B. & M., and that each of said Exhibits labels the northern or fan portion of Mare Island as "Island No. 1", but do not depict them as separate tracts of land or separate islands but all within a continuous mean high water line including both "Island No. 1" so called, and the lands [214] here in controversy, State Swamp and Overflowed Survey No. 34 so called; and that "Island No. 1" as set forth on said charts is a local place name of recent application; and that the lands in controversy here would fall partly on "Island No. 1" as designated on said charts; that each of said charts depicts Island No. 1 and Mare Island as separate tracts of firm land, though not as separate islands; that said plats, maps and surveys are official acts of plaintiff, duly authorized by law, and said Exhibit "H" was approved by the Secretary of the Interior. It is also true that it was no part of the duties or powers of the persons making said maps to impose local place names on said maps in such manner to prejudice the rights of the United States.

XXVII.

It is not true that said alleged grant was never finally confirmed to said Victor Castro or to his successors in interest. It is not true that the area or boundaries of said tract of land has never been determined or ascertained by survey thereof by the United States Surveyor General for California. It was surveyed by Freeman and the Freeman Survey was approved. It is true no patent thereof has issued to the confirmee or confirmees pursuant to the Act of Congress of July 1, 1864, or otherwise, but the court finds such patent unnecessary, as simply a confirmation by the United States to the United State, the transferee of the confirmees.

XXX.

It is not true that the patent of the United States to California, by relation or otherwise, is of the date of September 28, 1850, or is superior to the decrees of confirmation, [215] or superior to said Executive Orders purporting to reserve said premises for public uses of plaintiff, or that plaintiff is estopped to deny the validity of same.

It is true that the area of the premises conveyed to plaintiff by Bissell, Aspinwall and McArthur, January 4, 1853, was within the boundaries of the survey referred to in said conveyance and that said survey did include Island No. 1, so-called, as delineated on said charts, and the whole thereof, and included all parts of areas embraced in said Swamp and Overflow Survey No. 34 and some of the area

embraced in said Swamp and Overflow Survey No. 569. It is not true that the line depicted on Exhibit "N" as the line of the upland in 1852 was or is the northern boundary of Mare Island or the southern boundary of said premises embraced or claimed to be embraced in said Swamp and Overflow Survey No. 34, or that the northern line of Mare Island as there depicted is the Machine Shop depicted on said maps; that Exhibit "M" is not a copy of any decision of the United States Surveyor General for California relating to the Freeman Survey; but the Freeman Survey was a closed transaction and was finally approved at the time Exhibit "M" was written.

It is not true that a line drawn from Station 54 to Station 138 on the Freeman Survey constitutes the northern boundary of Mare Island or the southern boundary of any lands embodied or claimed to be embodied in said Survey No. 34, or the southern boundary of any Island No. 1, there being no such island as distinct from Mare Island.

XXXVI.

It is not true that the decisions and records in the suits of San Francisco Savings Union v. Irwin, or Bouldin [216] v. Phelps, are muniments of the title of these defendants or their co-tenants in title, or otherwise, in any controversy between any of said defendants or said co-tenants and the United States. None of the facts established in any of said suits are binding or conclusive on plaintiff herein.

XXXIX.

Exhibit "A" attached to defendants' answer is a Coast and Geodetic Survey in accord with the Freeman Survey and binding on plaintiff only so far as it shows the configuration of the coast, and the meanders of the mean high tide line which is the same as the Freeman Survey.

XLI.

That Exhibit "P" referred to and incorporated in said Answer filed March 31, 1931, was made and prepared by the United States Coast and Geodetic Survey pursuant to law in the manner and for the purposes depicted on its face to the extent authorized by Federal statutes and at the time stated on its face; but it is not true that any northern boundary of Mare Island or southern boundary of swamp and overflowed lands later established by State Segregation Swamp and Overflow Survey No. 34 or by any examinations made by the Secretary of the Interior or by any descriptions inserted in the Federal Patent to California, are depicted thereon or on any other surveys by said Coast and Geological Surveys of the United States, or was adopted by the Board of Officers sent to California to select a site for a Navy Yard or is a boundary survey of said area referred to in said Bissell conveyance, so-called to the United States. It is true that the plat of Township 4 N., R. 4 W., approved March 9, 1904, (Exhibit "F") was made under directions by the Secretary of [217] the Interior to compile

the same from maps on file in the Interior Department and from State segregations of swamp and overflowed lands in Napa and Sonoma Counties (the latter now Solano County), the same being State Swamp and Overflow Surveys Nos. 34 and 569, purportedly pursuant to the second clause of R. S. Sec. 2488, and also in accordance with directions contained in Interior Department letter "E" dated February 2, 1904. It is not true that the lands marked in red lines on said township plats are any part of any Island No. 1 but they are part of the lands covered by Swamp and Overflow Survey No. 569, all marked on said plat by the Surveyor, but not approved by the Secretary of the Interior, on the application of California for certification as alleged in paragraph 12 of said answer of March 31, 1931. It is not true that Exhibit "K" referred to and incorporated in said Answer (or plaintiff's Exhibit "L-16" in Evidence), is the survey of the Board of Officers sent to California to select a site for a Navy Yard nor is the only part conveyed and made part of said Mare Island by Bissell, Aspinwall and McArthur. That said Exhibit "K" is simply a detailed drawing of the proposed improvement of Mare Island. The survey referred to in said conveyance and in the selection by Secretary Kennedy and the reservation by President Fillmore is the survey and plat of Mare Island made by Cadwallader Ringgold in his chart of San Francisco Bay. It is not true that Exhibit "K" (the Cutt's detailed drawing, so-called) is the controlling de-

scription of the conveyance from Bissell and Aspinwall to the United States nor that said survey follows the water's edge or the natural boundaries of Mare Island throughout their entire extent or embraces the entire area of Mare Island or all of the lands that were granted to Victor Castro [218] and by him conveyed to the predecessor in title to the United States. It is not true that the Navy Yard plan attached to said exhibit also shows the area of Mare Island or the southerly line of said Survey No. 34, nor does the same exclude the areas in said State Surveys Nos. 34 and 569.

XLV.

* * * it is not true that any accretions, natural or artificial, appertaining or accruing to the premises included in Swamp and Overflow Survey No. 34 have become a part thereof nor that plaintiff has no right, title or interest therein, nor to any part thereof beyond or north of the line or parallel intersecting the northerly highland of Mare Island; whose northerly boundary is not the line of the upland, socalled, of Mare Island existing in 1852, shown on defendants' Exhibit "B", referred to and incorporated in said Answers, nor was said line the line established by the survey referred to by plaintiff's Exhibit "C"; nor was plaintiff at the time this action was filed, nor is it now, in possession of said survey. The survey and plat referred to in plaintiff's Exhibit "C" was the plat of Mare Island as inscribed on a chart of San Francisco Bay by

Cadwallader Ringgold, was used by Secretary Kennedy in making his selection of a site for a Navy Yard; by President Fillmore in reserving the same; and was thereafter duly recorded in the office of the United States Surveyor General for California, where it was apparently destroyed in the San Francisco fire of 1906.

XLVI.

It is not true that the grant by Juan B. Alvarado to Victor Castro did not embrace the premises described in [219] Swamp and Overflow Survey No. 34. It is true that the nunc pro tunc of the final confirmation of the claim of Bissell and Aspinwall was not followed by an official survey or patent as specified by the Act of March 2, 1851, and its Amendments, before the issue of the Federal patent to California, and in this connection the court finds that in 1877, pursuant to authority given him by law, the Surveyor General for California caused the land confirmed in the Bissell and Aspinwall confirmation to be surveyed by Freeman, and thereafter approved said survey; that said survey was thereafter duly approved by the Commissioner of the General Land Office, as hereinabove stated, and said approved survey was in all respects validated by said final decree of confirmation. It is not true that the claim of Victor Castro was inferior or subordinate in legal character to the Swamp and Overflow Land Grant of September 28, 1850, or to the Federal patent to the same by the plaintiff to Cali-

fornia, nor did said patent by relation become effective as of the date of September 28, 1850.

XLVII.

It is not true that the conveyance referred to in paragraph V of plaintiff's Bill of Complaint did not embrace the lands described in State Swamp and Overflow Survey No. 34, or any part thereof, but the said conveyance embraced all of said lands. It is not true that the executive order referred to in paragraph VI of plaintiff's Bill of Complaint did not embrace the premises covered in State Survey No. 34, or any part thereof. On the contrary, the court finds that said executive order embraced all of the lands covered by Swamp and Overflow Survey No. 34. [220]

L.

It is not true that the survey referred to in plaintiff's Exhibit "C", or the chart or map referred to in plaintiff's Exhibit "D" have been suppressed by plaintiff, but the court finds that the survey and plat referred to in the deed, the selection of Secretary Kennedy and the reservation of President Fillmore was Mare Island as shown on the chart of San Francisco Bay by Cadwallader Ringgold; that said chart used by President Fillmore in reserving Mare Island was duly recorded and preserved in the office of the United States Surveyor General of California and was destroyed in the fire of 1906.

It is not true that the United States Surveyor General for California in the exercise of his judg-

ment or discretion determined that the northerly boundary of Mare Island extended to a point or station on San Pablo Bay to a point or station on the Napa River, the first station being designated on Freeman's Survey as Station 34, to said second station No. 138. It is not true that said alleged decision, so-called, of said Surveyor General was never modified by the Secretary of the Interior or was in full force or effect on the day the said fee simple patent issued by the plaintiff to the State of California; nor is it true that the said line is the northern line of Mare Island or is the southern boundary line of said premises said Swamp and Overflow Survey No. 34, nor does the northern boundary of Mare Island closely approximate the parallel intersecting the northerly highlands of Mare Island as depicted on defendants' Exhibit "B".

[Endorsed]: Receipt of copy is hereby admitted this 14th day of October, 1939. Lodged Oct. 14, 1939. Filed Nov. 1, 1939.

McCUTCHEN, OLNEY,
MANNON & GREENE,
STONEY, ROULEAU,
STONEY & PALMER
Per ROBERT L. LIPMAN,
Attorneys for Defendants. [221]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled action came on regularly for trial before the above entitled Court, the Honorable A. F. St. Sure, United States District Judge, presiding, upon complainant's "Amended Bill of Complaint" and the "Amendments to Amended Bill of Complaint" and upon the "Answer of Defendant James Irvine to [222] the Amended Bill of Complaint and to the Amendments Thereto" and the first and second amendments to said answer of said defendant and upon the "Answer of Defendants Mary W. Stewart, Sears Point Toll-Road Co., a corporation, American Trust Company, a corporation, Bay Land Company, a corporation, Field and Tule Land Company, a corporation, and West End Land Company, a corporation, to the Amended Bill of Complaint and to the Amendments Thereto" and the first and second amendments to said answer of said defendants, said second amendments to said answers having been filed with leave of court to conform to the proofs. The complainant and said answering defendants appeared by their respective counsel. A stipulation in lieu of answer was filed on behalf of defendant Pacific Gas and Electric Company. The action was, prior to trial and upon stipulation, dismissed with prejudice as to defendants Meta S. Healy (substituted as a defendant in the action in the place of defendant W. H. Healy, de-

ceased), Russ Investment Company, a corporation, (sued as Russ Investment Co., a corporation), Henry A. Kendal (sued as Henry A. Kendall), Joseph Dubeault, Wilfrid Debeault (sued as Wilfred Dubeault), and Charles J. Monahan, and as to the lands owned by said defendants described in the answers filed by said defendants and in the orders of dismissal as to said defendants. Prior to trial defendants Evadne B. Middlemas, Louise DeVoe Brickell, Crocker First Federal Trust Company (substituted as a defendant in the action in place of Howard Brickell, deceased,) Ida M. Brickell, Frank E. Knight, California Pacific Realty Company, a corporation, (sued as California Pacific Realty Co., a corporation), California Pacific Title & Trust Company, a corporation, (sued as California Pacific Title and Truist Co., a corporation) American Securities Company, a corporation, (sued as American Securities Co., a [223] corporation) and A. O. Stewart, sued as Fourth Doe, filed disclaimers in the action and as to said defendants the action is dismissed. The following named defendants, to-wit, Henry Claude Kettlemen, C. D. Hillman, sued as First Doe, E. G. Swanberg, sued as Third Doe, J. C. Aitken, sued as Fifth Doe, H. V. Casebolt, sued as Sixth Doe, H. W. Davis, sued as Seventh Doe, having failed to appear in the action, decrees pro confesso were ordered against said defendants. Defendant James Clayton, sued as Second Doe, having died more than two years ago, the action as to said defendant is dismissed. Defendant Edmund Burke, sued as Tenth Doe, having died and

Walter E. Burke as administrator of the estate of said Edmund Burke having been substituted as a defendant in his place and stead and said Walter Burke having died more than two years ago, the action is as to said defendant dismissed. Defendants Eighth Doe, Ninth Doe and all other defendants not hereinabove specifically mentioned not being found or served, the action is as to them dismissed. The case was tried on June 8th, June 9th, June 11th, and June 15th, 1937, and evidence both oral and documentary having been introduced and received and briefs having been filed and the Court having, upon written stipulation, visited and viewed the lands and premises which are the subject of the action, and the cause having been submitted to the Court for consideration and decision, after due consideration thereof the Court makes its decision and its findings of fact and conclusions of law as follows:

FINDINGS OF FACT.

The Court now finds as follows:

1.

That the complainant, United States of America, is not the owner of and at no time subsequently to September 28, 1850, ever was the owner of the lands or any of the lands described [224] in Subdivision II of the Amended Bill of Complaint and has no right, title or interest in or to said lands or any thereof. That the following named defendants, to-wit, James Irvine, Pacific Gas and Electric Com-

pany (sued as Pacific Gas and Electric Co.), Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company (sued as American Trust Co.), Bay Land Company (sued as Bay Land Co.), Field and Tule Land Company (sued as Field and Tule Land Co.), and West End Land Company (sued as West End Land Co.), are, severally, the owners of those portions of the said lands described in said Subdivision II of the Amended Bill of Complaint (or of interests therein) more particularly described and set forth in Exhibit A attached to these Findings of Fact and Conclusions of Law and hereinafter referred to as "Exhibit A hereto", which is hereby made a part of these Findings of Fact and Conclusions of Law as fully as though herein set forth at length. That none of said last-mentioned defendants owns or has any right, title or interest in or to any of the lands described and referred to in Exhibit A hereto other than as stated and set forth in said Exhibit A hereto. That at no time subsequently to September 28, 1850, has complainant ever occupied said lands or any thereof, either as a part of the Mare Island Navy Yard Reservation, or for public or military or naval purposes or otherwise or at all, and that at no time since September 28, 1850, has complainant ever been in the possession of or entitled to the possession of said lands or any part thereof. That for forty years last past the said defendants owning, severally, those portions of said lands described in Subdivision II of the Amended Bill of Complaint as above stated and their respec-

tive predecessors in interest (other than complainant) have been in and entitled [225] to the possession of said lands so owned by them as aforesaid and their said possession of said lands has at all times been actual, open, notorious, under claim of right and under color of title and adverse to the complainant and to the whole world.

2.

That none of the following named defendants, to-wit, Henry Claude Kettleman, C. D. Hillman, sued as First Doe, E. G. Swanberg, sued as Third Doe, J. C. Aitken, sued as Fifth Doe, H. V. Casebolt, sued as Sixth Doe, H. W. Davis, sued as Seventh Doe owns or has right, title or interest in or to the lands or any of the lands described in Subdivision II of the Amended Bill of Complaint or in or to the lands or any of the lands described and referred to in Exhibit A hereto.

3.

That all of the lands described in Subdivision II of the Amended Bill of Complaint were on September 28, 1850, unreserved and unsold public lands of the United States, and all of said lands were then swamp and overflowed lands, made unfit thereby for cultivation, within the purview and meaning of the Swamp Land Act (to-wit: "An Act to enable the State of Arkansas and other States to reclaim the 'Swamp Lands' within their limits", 9 Stats. 519), and all of said lands were granted and passed

to the State of California under and by virtue of said Act. That the defendants named in paragraph 1 of these Findings of Fact are, severally, the successors in ownership and title to the State of California of portions of said lands, as more particularly stated and set forth in Exhibit A hereto.

4.

That on or about May 20, 1841, one Juan B. Alvarado, the then Constitutional Governor of the Department of California, [226] granted to one Victor Castro a tract of land known as "Isla de la Yegua" or Mare Island by an instrument in writing, a translation of which is attached to the Amended Bill of Complaint as Exhibit A. That said grant was, by the successors in ownership and title thereto of said Victor Castro, presented for confirmation to the Board of Land Commissioners empowered to ascertain and settle private land claims in the State of California pursuant to the provisions of the Land Commission Act of March 3, 1851 (to-wit: "An Act to ascertain and settle the private Land Claims in the State of California", 9 Stats. 631), and said grant was by said Board confirmed and, on appeal from said order of confirmation to the United States District Court for the Northern District of California, said grant and the Board's said order of confirmation were by the judgment and decree of said United States District Court confirmed. That complainant has acquired and succeeded to all of the right, title and interest of said Victor Castro

to said Mare Island and is now the owner of said Mare Island, having purchased the same for valuable consideration.

5.

That none of the lands described in Subdivision II of the Amended Bill of Complaint and more particularly none of the lands owned by any of the defendants as more particularly described and set forth in Exhibit A hereto was ever a part of Mare Island; that none of said lands was, either at the time of said grant to Castro or at the time of any of the aforesaid proceedings for the confirmation of said grant, a part of the lands known as or referred to as or by the name of Mare Island; that none of said lands was embraced in or covered by the aforesaid grant to said Victor Castro of Mare Island; that none of [227] said lands was ever occupied by or in the possession of said Victor Castro; that none of said lands was in the aforesaid proceedings confirming the said grant made to Victor Castro claimed as a part of or to be a part of Mare Island; that none of said lands was covered by or embraced within the aforesaid confirmation proceedings or the order of confirmation made by said Board of Land Commissioners or said judgment and decree of the United States District Court for the Northern District of California confirming said grant and said order of confirmation of said Board and none of said lands was confirmed by said Board or by said Court; and that none of said lands was purchased or acquired by the complainant in or as

a part of its purchase of said Mare Island. That a large portion of the lands owned by defendant James Irvine as described and set forth in Exhibit A hereto lies to the east and northeast of Dutchman's Slough, also known as Boat Cut-off; that said portion of said lands is more particularly shown upon the map attached to the answer of defendant James Irvine as Exhibit B thereto; that said Dutchman's Slough or Boat Cut-off is and ever since prior to the year 1841 has been a natural navigable body of water, cutting off all of said lands lying to the east and northeast thereof from all of the remaining lands described in Exhibit A hereto and all of the lands lying within said Mare Island Navy Yard Reservation.

6.

That in July, 1877, the Surveyor General of California appointed James E. Freeman, United States Deputy Surveyor, to make a survey and plat of the claim to Mare Island pursuant to the provisions of said Land Commission Act and the Act of July 1, 1864 (to-wit: "An Act to expedite the Settlement of [228] Titles to Lands in the State of California", 13 Stats. 332), and thereafter gave notice of the survey and plat made by said Freeman by publication as required by said Acts and retained in his office, for public inspection, the said survey and plat until more than ninety days from the date of the first publication of the aforesaid notice. That neither the said survey nor the said plat so made and pre-

pared by said Freeman was ever approved, either expressly or impliedly, by the Surveyor General of California, either as required by said Land Commission Act or by said Act of July 1, 1864, or otherwise or at all. That copies of said survey and said plat were thereafter transmitted by the Surveyor General of California to the Commissioner of the General Land Office. That neither the said survey nor the said plat was ever approved, either expressly or impliedly, by the Commissioner of the General Land Office, either as required by said Land Commission Act or by said Act of July 1, 1864, or otherwise or at all, and neither said survey nor said plat was ever used or acted upon by the Commissioner of the General Land Office as an approved survey or as an approved plat. That neither the said survey nor the said plat was ever approved, either expressly or impliedly, by the Secretary of the Interior, either as required by said Land Commission Act or by said Act of July 1, 1864, or otherwise or at all, and neither said survey nor said plat was ever used or acted upon by the Secretary of the Interior as an approved survey or as an approved plat. That neither the said survey nor the said plat has ever been approved as required by law or otherwise. That a large part, but not all, of the lands described in Subdivision II of the Amended Bill of Complaint are embraced within the exterior limits of said survey. [229]

7.

That on November 6, 1850, the President of the United States, by executive order, exempted and reserved from sale, for public purposes "Mare Island". That none of the lands described in Subdivision II of the Amended Bill of Complaint was included or embraced within the lands so exempted and reserved and none of said land was exempted or reserved from sale by said executive order or was subject to reservation at any time subsequently to September 28, 1850.

8.

That on February 11, 1853, the President of the United States, by executive order, reserved from sale, for public purposes, that tract of land in the Bay of San Francisco bounded by the Bay of San Pablo, the Straits of Carquinez and Napa Creek, known as Mare Island, together with all its appendages of tule or marsh land ordinarily reputed to belong to said Island, and the harbors, waters and anchorages connected therewith and necessary to the use of the same. That none of the lands described in Subdivision II of the Amended Bill of Complaint was included or embraced within the lands so exempted and reserved and none of said land was exempted or reserved from sale by said executive order or was subject to reservation at any time subsequently to September 28, 1850.

9.

That on June 5, 1896, the United States issued its patent to the State of California, known as Swamp

Land Patent No. 72, which said patent was issued under said Swamp Land Act, patenting to the State of California all of the lands described in Subdivision II of the Amended Bill of Complaint lying within Township 3 North, Range 5 West, M. D. B. & M. That on February 7, 1910, the [230] United States issued its patent to the State of California, known as Swamp Land Patent No. 152, which said patent was issued under said Swamp Land Act, patenting to the State of California all of the lands described in Subdivision II of the Amended Bill of Complaint lying within Township 4 North, Range 5 West, M. D. B. & M. That on April 26, 1924, the United States issued its patent to the State of California, No. 937055, which said patent was issued under said Swamp Land Act, patenting to the State of California all of the lands described in Subdivision II of the Amended Bill of Complaint lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. That each of said patents is in all respects valid and in full force and effect. That all of the lands of defendants West End Land Company and Field and Tule Land Company more particularly described in Exhibit A hereto and all those portions of the lands of defendants Bay Land Company and Sears Point Toll-Road Co. and that portion of the right of way and easement of defendant Pacific Gas and Electric Company described and referred to in said Exhibit A hereto lying in Townships 3 and 4 North, Range 5 West, M. D. B. & M. are embraced within and

are covered by said Swamp Land Patents Nos. 72 and 152.

10.

That the Mare Island Navy Yard Reservation (hereinafter for convenience referred to as said Mare Island Reservation) is a naval reservation of the United States, and the territory thereof is territory of the United States subject to the exclusive jurisdiction, dominion and sovereignty of the United States and not to the jurisdiction, dominion or sovereignty of the State of California. That such exclusive jurisdiction, dominion and sovereignty were acquired by the United States as follows: That on November 6, 1850, and again on February 11, 1853, the President of the United States, by executive order, reserved Mare [231] Island from sale and for public use as a navy yard and naval depot. That in addition, in 1853 the United States purchased the claims of certain private persons to said Mare Island and this purchase was consented to by the State of California by acts of her Legislature adopted April 27, 1852 (Cal. Stats. 1852, p. 149) and May 11, 1854 (Cal. Stats. 1854, p. 161). That by the act of the Legislature of the State of California of March 2, 1897 (Cal. Stats. 1897, p. 51) the State of California expressly ceded exclusive jurisdiction to the United States of all lands within said State held, occupied or reserved by the United States for military purposes or defense, which cession included the lands then occupied by the United

States as said Mare Island Reservation, said act requiring that a sufficient description of such lands be filed in the proper office of record in the counties in which the same were situated, and the United States, pursuant to said act, filed and recorded in the office of the County Recorder of the County of Solano (that being the county within the exterior boundaries of which said Mare Island Reservation is situate) a sufficient description of said Mare Island Reservation, said filing being a map showing the boundaries of said Mare Island Reservation, which map was recorded November 10, 1913, in Book 5 of Maps, page 4, Solano County Records. That none of the lands described or referred to in Subdivision II of the Amended Bill of Complaint was a part of said Mare Island so reserved or was held or occupied or reserved by the United States for military purposes or defense or was included or embraced within the description of said Mare Island Reservation or map thereof recorded by the United States as found above, nor was jurisdiction over any of said lands ceded by the State of California to the [232] United States. That the lands described in Subdivision II of the Amended Bill of Complaint are the lands embraced within that certain state segregation survey known as Swamp and Overflowed Land Survey No. 569 (hereinafter for convenience referred to as Survey 569). That beginning in the year 1890 and consistently ever since (except for the filing of this action on April 22, 1930) the United States has recognized that the

northwesterly boundary of said Mare Island Reservation did not extend beyond or to the north of the southeasterly boundary of said Survey 569. That said southeasterly boundary of said Survey 569 has been established, recognized and acquiesced in by the United States as the line beyond which said Mare Island Reservation did not extend, and at no time since 1890 has the United States asserted or attempted to assert or exercise jurisdiction, dominion or sovereignty over any of the lands within said Survey 569 as a part of said Mare Island Reservation. That on the contrary, ever since 1890 the State of California has, with the knowledge of and without objection by the United States, consistently asserted and exercised its jurisdiction over all of said lands as lands subject to its jurisdiction, dominion and sovereignty and as lands which were not within or a part of said Mare Island Reservation. That said southeasterly boundary line of said Survey 569 became the established, recognized and accepted public boundary line between said Survey 569 and said Mare Island Reservation in the manner next hereinafter set forth. That in the year 1853 the United States took possession of said Mare Island and commenced the establishment of a navy yard and navy depot thereon and has ever since occupied said Island as a reservation for naval purposes, with the consent of the State of California as hereinbefore found, and has exercised exclusive jurisdiction, [233] dominion and authority over said Mare Island and said naval reservation.

That on September 28, 1850 the United States by said Swamp Land Act granted to the State of California all unsold swamp and overflowed lands made unfit thereby for cultivation within said State, including, as a part thereof, all of the lands described and referred to in Subdivision II of the Amended Bill of Complaint, being the lands embraced within said Survey 569. That the southeasterly boundary line of the said lands and of the lands owned by defendants as set forth in Exhibit A hereto is the southeasterly boundary of said survey 569. That on or about the 7th day of April, 1874 the State of California having theretofore and in the year 1869 sold the lands in Survey 569 to one Jacob C. Hinckley, issued its patent for said land to one John W. Pearson, as assignee of said Hinckley, and thereafter the defendants named in paragraph 1 of these Findings of Fact by mesne conveyance acquired from said Pearson those portions of said Survey 569 owned by them as set forth in Exhibit A hereto. That the United States has never at any time occupied any portion of said Survey 569 nor has it at any time used any portion of said lands for any purpose in connection with said Mare Island Reservation nor has any portion of said Reservation been established or located thereon. That shortly prior to September 13, 1883 the then commandant of Mare Island Navy Yard, one John Irwin, asserted the right of such commandant to the possession of said Survey 569 as being property of the United States and excluded therefrom the predecessors in

interest of the defendants referred to in Exhibit A hereto. That thereupon and on September 13, 1883 said predecessors in interest of said defendants brought an action in ejectment against said Irwin for the recovery of said Survey 569. That said action was defended on [234] behalf of the United States and upon the ground that the lands of which said commandant had taken possession were a part of Mare Island and were owned by the United States as a part of said Mare Island Reservation. That on July 8, 1886 the United States Circuit Court for the District of California gave judgment in said action in favor of the plaintiffs therein and against said commandant, expressly finding and holding that the lands embraced in said Survey 569 were not a part of Mare Island and were not owned by the United States, but on the contrary that the plaintiffs in said action were the owners thereof as the successors in ownership and title to the State of California, as the grantee of the United States under the grant made by said Swamp Land Act. That the United States, in the name of said Irwin but on its own behalf, prosecuted an appeal from said judgment to the Supreme Court of the United States and on February 3, 1890 said judgment was affirmed by said last-mentioned Court. That ever since the affirmance of said judgment, until the commencement of this action, said judgment was and has been accepted by the United States and by the State of California and by all persons interested in said lands as conclusively

establishing that none of the lands in said Survey 569 was a part of Mare Island or was owned by the United States and until the commencement of this action on the 22nd day of April, 1930 the United States asserted no claim to any right or interest in said lands. That from the affirmance of said judgment to the commencement of this action the southeasterly boundary line of said Survey 569 has consistently been recognized by the United States as the public boundary line between said Mare Island Reservation and the territory subject to the jurisdiction, dominion and sovereignty of the State of California, to-wit, the lands described in Subdivision II of the Amended [235] Bill of Complaint, and the State of California has ever since the affirmance of said judgment consistently exercised jurisdiction, dominion and sovereignty over all of the lands embraced in said Survey 569, all as evidenced by the following acts among others:

(a) The State of California has consistently taxed the real and personal property in said Survey 569 each year since 1882; has included the lands therein in election districts and voting precincts; has exercised through its courts civil and criminal jurisdiction within said Survey 569; and has, through its subordinate instrumentalities, granted franchises for toll roads across said lands. In addition thereto, the predecessors in interest of the defendants named in paragraph 1 of these Findings of Fact have reclaimed large portions of the lands within said Survey 569, and for more than thirty

years prior to the filing of this action have been in the undisturbed possession and occupancy of said lands and have cultivated and lived on the same. The United States, on the other hand, has not attempted to take possession of any of the lands in said Survey 569, either as a part of said Mare Island Reservation or otherwise, nor has it attempted to exercise jurisdiction, dominion and sovereignty over any of said lands, as it has consistently done with respect to the lands within said Mare Island Reservation, but has permitted, without objection, the reclamation and cultivation of the lands to the north and west of said line by the aforesaid defendants and their predecessors in interest and the making of improvements thereon and the construction and use of toll roads, pipe lines and electric power lines across the same.

(b) In the year 1896 the then commandant of Mare Island Navy Yard and the then predecessors in interest of the defendants [236] named in paragraph 1 of these Findings of Fact jointly caused a survey to be made for the purpose of determining the location of the southeasterly boundary line of said Survey 569 as the public boundary line beyond which the said Mare Island Reservation did not extend, and upon the determination of such boundary line the then predecessors in interest of said defendants, to the knowledge and without objection by the United States, constructed a levee on said line, as so determined, for the purpose of reclaiming the land to the north thereof. Subsequently it

was discovered that the boundary line as so determined was erroneous and that the true southeasterly boundary line of said Survey 569 lay to the northwest of said line as theretofore established; whereupon, said boundary line was correctly located and thereafter and in December, 1914, the United States, with the acquiescence of the predecessors in interest of said defendants, erected and has ever since maintained a substantial post and wire fence along the true southeasterly boundary line of said Survey 569 as a boundary fence marking and indicating the line beyond which said Mare Island Reservation did not extend.

(c) That as hereinbefore found, on November 10, 1913, pursuant to said act of the Legislature of the State of California of 1897 ceding to the United States the exclusive jurisdiction over all lands within the State of California held, occupied or reserved by the United States for military purposes or defense, the United States filed and recorded in the office of the County Recorder of the County of Solano a map showing the boundaries of said Mare Island Reservation and upon said map the northwesterly boundary line of said Reservation is shown as the southeasterly boundary line of said Survey 569, as correctly located as in the preceding subparagraph (b) heretofore stated. [237]

(d) On June 5, 1896 the United States patented to the State of California all those portions of said Survey 569 lying in Township 3 North, Range 5 West, M. D. B. & M., and on February 7, 1910, the

United States patented to the State of California all those portions of Survey 569 lying in Township 4 North, Range 5 West, M. D. B. & M., by said Swamp Land Patents Nos. 72 and 152 respectively. Thereafter application was made for the issuance of a patent to the State of California of the lands embraced within said Survey 569 lying between the lands patented as above set forth and the southeasterly boundary line of said Survey 569, said lands being those lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. Upon such application being made the Secretary of the Interior under date of October 18, 1912 addressed a letter to the Secretary of the Navy requesting of him such data as might be in the latter's possession relative to the limits of the lands embraced in Mare Island, to the end that the matter of segregating the swamp and overflowed lands from said Mare Island might be considered. Under date of February 1, 1913 the Acting Secretary of the Navy addressed a reply to the Secretary of the Interior calling the latter's attention to the judgment in the action of ejectment against John Irwin hereinbefore mentioned, which held that the lands embraced within said Survey 569 were not a part of Mare Island and with said letter said Acting Secretary of the Navy forwarded to the Secretary of the Interior a map or plat showing the then limits of said Mare Island and showing that the northwesterly boundary line of said Mare Island Reservation did not extend beyond or to the north or west of

said southeasterly boundary line of said Survey 569. Thereafter the Department of the Interior directed that appropriate surveys be made of [238] said Townships 3 and 4 North, Range 4 West, M. D. B. & M., for the purpose of segregating the swamp and overflowed lands therein granted to the State of California by said Swamp Land Act and directed that such survey should be limited to the lands in said townships lying to the north and west of said southeasterly boundary line of said Survey 569 as established by the fence erected upon said boundary line by the United States as hereinbefore found. Such surveys were made and approved, and the Secretary of the Navy having expressed the view in a letter to the Secretary of the Interior, under date of June 4, 1923, that all of the lands lying within said Survey 569 had been lost to the United States by reason of the judgment in said ejectment suit against John Irwin hereinbefore referred to, the Department of the Interior ordered all of the lands embraced within said Survey 569 lying within Townships 3 and 4 North, Range 4 West, M. D. B. & M. to be patented to the State of California, and pursuant to said instructions said lands were patented to the State of California by patent dated April 26, 1924, and numbered 937055.

11.

That following the affirmance by the United States Supreme Court of the judgment in favor of the predecessors of the defendants named in para-

graph 1 of these Findings of Fact and against said John Irwin as found in paragraph 10 of these Findings of Fact one L. E. Cross purchased those portions of the lands embraced in said Survey 569 described and referred to in Exhibit A hereto and thereupon took possession thereof and in the year 1897 commenced the reclamation thereof by the construction of extensive levees and drainage works. That preliminarily to the construction of said levees and drainage works the then commandant of the Mare [239] Island Navy Yard and said Cross jointly caused a survey to be made for the purpose of determining the southeasterly boundary line of said Survey 569 in order that said Cross might construct a levee along said line and such levee was thereupon constructed by said Cross. That said levees and drainage works were completed by said Cross on or about the year 1899 and said Cross thereupon built roads and erected farm houses and other farm buildings on said lands, at a total cost of approximately $80,300, and commenced the farming and cultivation of a large part of the same, and such farming and cultivation by said Cross and his successors in interest has continued until the present time. That portions of said lands were, following the affirmance of said judgment, acquired and improved at very considerable expense by the defendants mentioned in Exhibit A hereto as follows: defendant James Irvine in 1928 purchased the lands owned by him as stated in Exhibit A hereto for the sum of $100,000 and since said date has ex-

pended $26,000 in the improvement thereof, which improvements were made or contracted for prior to the commencement of this action; defendant West End Land Company in 1923 purchased the lands owned by it as stated in Exhibit A hereto for the sum of $27,000 and since said date and prior to 1930 expended in excess of $25,000 in the improvement thereof; defendant Field and Tule Land Company about twenty years ago purchased the lands owned by it as stated in Exhibit A hereto paying from $25 to $35 per acre therefor and since said date and prior to the commencement of this action expended in excess of $22,500 in the improvement thereof; defendant Mary W. Stewart in 1928 purchased the lands owned by her as stated in Exhibit A hereto for the sum of $18,013.35; defendant Sears Point Toll-Road Co. commencing in 1926 purchased the lands owned by it as [240] stated in Exhibit A hereto and in 1928 completed the construction of a toll-road thereon at a total cost of between $180,000 and $190,000; and defendant Bay Land Company in 1920 purchased the lands owned by it as stated in Exhibit A hereto paying approximately $35 an acre therefor and since said date and prior to 1930 expended in excess of $22,500 in the improvement thereof. That ever since the predecessors in interest of the aforesaid defendants took possession of said lands following the affirmance of said judgment against said Irwin, they and their successors in interest have had and been in actual, open, visible, exclusive and undisturbed possession of said lands.

That each of the defendants who, as hereinabove found, purchased the lands owned by it as stated in Exhibit A hereto, made such purchase prior to the commencement of this action and for valuable consideration from the successors in interest of the State of California and each such purchase was made subsequently to the issuance by complainant of its patents to the State of California for said lands and in reliance upon said patents and without any knowledge or notice of any claim to said lands by or on behalf of the United States. That the defendants mentioned in paragraph 1 of these Findings of Fact, other than defendants American Trust Company and Pacific Gas and Electric Company, obtained title insurance upon the lands owned by them, respectively, as stated in Exhibit A hereto and that the title insurance companies which issued such title insurance would not have issued title insurance upon said lands had not the United States issued its patents for said lands, as heretofore found. [241]

CONCLUSIONS OF LAW.

The Court concludes:

1.

That this action is barred by the statute of limitations (Section 8 of the Act of March 3, 1891, 26 Stats. 1099, Title 43 U. S. C. Sec. 1166) as to all lands described in Exhibit A hereto embraced in said Swamp Land Patents 72 and 152, to-wit: All

of the lands described in said Exhibit A hereto lying in Townships 3 and 4 North, Range 5 West, M. D. B. & M., being all of the lands owned by defendants West End Land Company and Field and Tule Land Company and those portions of the lands owned by defendants Bay Land Company and Sears Point Toll-Road Co. and that portion of the right-of-way and easement owned by defendant Pacific Gas and Electric Company lying in Townships 3 and 4 North, Range 5 West, M. D. B. & M., as shown in said Exhibit A hereto.

2.

That neither the complainant, United States of America, nor any of the following named defendants, to-wit, Henry Claude Kettleman, C. D. Hillman, sued as First Doe, E. G. Swanberg, sued as Third Doe, J. C. Aitken, sued as Fifth Doe, H. V. Casebolt, sued as Sixth Doe, H. W. Davis, sued as Seventh Doe, is the owner of or has any right, title or interest in or to the lands or any of the lands described in Subdivision II of the Amended Bill of Complaint or in Exhibit A hereto, but that defendants James Irvine, Pacific Gas and Electric Company, West End Land Company, Field and Tule Land Company, Bay Land Company, Mary W. Stewart, Sears Point Toll-Road Co. and American Trust Company are, severally, the owners of and have title to the lands described in Exhibit A hereto as in said Exhibit A stated and set [242] forth and

that said defendants are entitled to have their titles thereto quieted.

Dated November 1, 1939.

A. F. ST. SURE,
United States District Judge.

Approved as to form, as provided in Rule 22.

.....
United States Attorney,

.....
Assistant United States Attorney,
Attorneys for Complainant. [243]

EXHIBIT A

It is the fact and the Court finds that

[Printer's Note]: Here follows statement of lands owned by various defendants, including particular description of the lands owned by each, in identical form and content, as appears in Exhibit "A" to the Judgment. [244]

In the District Court of the United States for the Northern District of California, Southern Division.

In Equity

No. 2685-S

UNITED STATES OF AMERICA,

Complainant,

vs.

MARY W. STEWART, EVADNE B. MIDDLEMAS, LOUISE DeVOE BRICKELL, HOWARD BRICKELL, IDA M. BRICKELL, Heirs and Distributees of JOHN C. BRICKELL, Deceased, RUSS INVESTMENT CO., a corporation, SEARS POINT TOLL-ROAD CO., a corporation, FRANK E. KNIGHT, HENRY A. KENDALL, JOSEPH DUBEAULT, WILFRED DUBEAULT, CHARLES J. MONAHAN, W. H. HEALY, JAMES IRVINE, CALIFORNIA PACIFIC REALTY CO., a corporation, BAY LAND CO., a corporation, FIELD AND TULE LAND CO., a corporation, PACIFIC GAS AND ELECTRIC CO., a corporation, AMERICAN TRUST CO., a corporation, CALIFORNIA PACIFIC TITLE AND TRUST CO., a corporation, WEST END LAND CO., a corporation, AMERICAN SECURITIES CO., a corporation, HENRY CLAUDE KETTLEMAN, C. D. HILLMAN, sued as First Doe, JAMES CLAYTON, sued

as Second Doe, E. G. SWANBERG, sued as Third Doe, A. O. STEWART, husband of Mary W. Stewart, sued as Fourth Doe, J. C. AITKEN, sued as Fifth Doe, H. V. CASEBOLT, sued as Sixth Doe, H. W. DAVIS, sued as Seventh Doe, Eighth Doe, Nineth Doe, EDMUND BURKE, sued as Tenth Doe, also all other persons unknown claiming any right, title, estate, lien, or interest in the real property described in the Complaint, adverse to Complainant's title thereto,

Defendants.

JUDGMENT

The above entitled action came on regularly for trial before the above entitled Court, the Honorable A. F. St. Sure, United States District Judge, presiding, upon complainant's "Amended Bill of Complaint" and the "Amendments to Amended Bill of Complaint" and upon the "Answer of Defendant James Irvine to the [260] Amended Bill of Complaint and to the Amendments Thereto" and the first and second amendments to said answer of said defendant and upon the "Answer of Defendants Mary W. Stewart, Sears Point Toll-Road Co., a corporation, American Trust Company, a corporation, Bay Land Company, a corporation, Field and Tule Land Company, a corporation, and West End Land Company, a corporation, to the Amended Bill of Complaint and to the Amendments Thereto" and the first and second amendments to said answer

of said defendants, said second amendments to said answers having been filed with leave of court to conform to the proofs. The complainant and said answering defendants appeared by their respective counsel. A stipulation in lieu of answer was filed on behalf of defendant Pacific Gas and Electric Company. The action was, prior to trial and upon stipulation, dismissed with prejudice as to defendants Meta S. Healy (substituted as a defendant in the action in the place of defendant W. H. Healy, deceased), Russ Investment Company, a corporation, (sued as Russ Investment Co., a corporation), Henry A. Kendal (sued as Henry A. Kendall), Joseph Dubeault, Wilfrid Debeault (sued as Wilfred Dubeault), and Charles J. Monohan, and as to the lands owned by said defendants described in the answers filed by said defendants and in the orders of dismissal as to said defendants. Prior to trial defendants Evadne B. Middlemas, Louise DeVoe Brickell, Crocker First Federal Trust Company (substituted as a defendant in the action in place of Howard Brickell, deceased), Ida M. Brickell, Frank E. Knight, California Pacific Realty Company, a corporation, (sued as California Pacific Realty Co., a corporation), California Pacific Title & Trust Company, a corporation, (sued as California Pacific Title & Trust Co., a corporation), American Securities Company, a corporation, (sued as American Securi- [261] ties Co., a corporation) and A. O. Stewart, sued as Fourth Doe, filed disclaimers in the action and as to said defendants

the action is dismissed. The following named defendants, to-wit, Henry Claude Kettleman, C. D. Hillman, sued as First Doe, E. G. Swanberg, sued as Third Doe, J. C. Aitken, sued as Fifth Doe, H. V. Casebolt, sued as Sixth Doe, H. W. Davis, sued as Seventh Doe, having failed to appear in the action, decrees pro confesso were ordered against said defendants. Defendant James Clayton, sued as Second Doe, having died more than two years ago, the action as to said defendant is dismissed. Defendant Edmund Burke, sued as Tenth Doe, having died and Walter E. Burke as administrator of the estate of said Edmund Burke having been substituted as a defendant in his place and stead and said Walter Burke having died more than two years ago, the action is as to said defendant dismissed. Defendants Eighth Doe, Ninth Doe and all other defendants not hereinabove specifically mentioned not being found or served, the action is as to them dismissed. The case was tried on June 8th, June 9th, June 11th, and June 15th, 1937, and evidence both oral and documentary having been introduced and received and briefs having been filed and the Court having, upon written stipulation, visited and viewed the lands and premises which are the subject of the action, and the cause having been submitted to the Court for consideration and decision, after due consideration thereof the Court having made and caused to be filed its written Findings of Fact and Conclusions of Law,

Now, Therefore, It Is Ordered, Adjudged and Decreed as follows:

1.

That defendants James Irvine, Pacific Gas and Electric [262] Company, Mary W. Stewart, Bay Land Company, Field and Tule Land Company, West End Land Company, Sears Point Toll-Road Co. and American Trust Company are, severally, the owners of those certain lands (or interests therein) more particularly described and set forth in Exhibit A attached to this judgment and hereby made a part hereof as fully as though herein set forth at length, and their said rights and interests are hereby declared and established.

2.

That neither the complainant, United States of America, nor any of the following named defendants, to-wit, Henry Claude Kettleman, C. D. Hillman, sued as First Doe, E. G. Swanberg, sued as Third Doe, J. C. Aitken, sued as Fifth Doe, H. V. Casebolt, sued as Sixth Doe, H. W. Davis, sued as Seventh Doe, owns or has any right, title or interest in or to the lands or any of the lands described in said Exhibit A hereto, and that complainant and said last mentioned defendants are, and each of them is, hereby perpetually enjoined and debarred from claiming or asserting any right, title or interest in or to the said lands described in Exhibit A hereto, or any part thereof.

Dated this 1st day of November, 1939.

A. F. ST. SURE,
United States District Judge. [263]

EXHIBIT A

(a) Defendant James Irvine is the owner in fee simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain real property situate, lying and being in the Counties of Napa and Solano, State of California, more particularly described as follows, to-wit:

Commencing at the point of intersection of the *quarter section line running* north and south through the middle of Sec. 31, T. 4 N. R. 4 W., with the boundary line between Napa and Solano Counties, and running thence north along said quarter section line to the middle of South Slough; thence in a easterly, southerly and easterly direction following the center line of said South Slough, to the westerly shore of Napa Bay; thence southerly along the shore of said Napa Bay to the northerly line of S. & O. Survey No. 34; thence westerly along the north line of S. & O. Survey No. 34 to the northwest corner thereof; thence south along the west line of said S. & O. Survey #34, to San Pablo Bay; thence northwesterly along the shore of said San Pablo Bay to its point of intersection with the quarter section line running north and south through the middle of Sec. 6, T. 3 N. R. 4 W.; thence north along the middle quarter section line of said Sec. 6 and Sec. 31 to the place of beginning, containing 3524.15 acres, more or less and being 57.15 acres in Napa County and 3467 acres in Solano County. Ex-

cepting therefrom that portion conveyed by Mary W. Stewart and A. O. Stewart to Sears Point Toll-Road Company, dated Nov. 3, 1926, recorded Apr. 1, 1927, in Book 288 of Deeds, at page 434.

Defendant Pacific Gas and Electric Company is the owner of the right of way and easement for transmission line purposes over the above described lands granted by that certain right of way deed dated May 8, 1911, from Lester E. Cross, as grantor, to defendant Pacific Gas and Electric Company, as grantee, recorded in the office of the County Recorder of the County of Napa, State of California, on May 15, 1911, in Volume 100 of Deeds at page 286 and also recorded in the office of the County Recorder of the County of Solano, State of California, on May 26, 1911, in Liber 192 of Deeds at page 53.

(b) Defendant Mary W. Stewart is the owner in fee [264] simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain real property situate, lying and being in the County of Solano, State of California, more particularly described as follows, to-wit:

All that portion of the West half of Section 31, T. 4 N. R 4 W., lying South of South Slough and within Solano County.

Also the fractional West half of Section 6, T. 3 N. R. 4 W., lying within the boundary of Swamp & Overflowed Land No. 569; said par-

cels being a portion of Swamp and Overflowed Lands, Survey No. 569 and situate on Cross Island.

Excepting therefrom the following described premises known as Sears Point Toll Road, described as follows: Beginning at the point of intersection of the easterly boundary line of the West ½ of fractional Section 6, with the surveyed line of said Toll Road, said point being Engineer's Station 220 + 91.13 of said surveyed line and running thence N. 65° 50′ 30″ W. 311.56 feet to Engineer's Station 224 + 02.69; thence along a curve to the left of radius of 20,000 feet 523.60 feet to Engineer's Station 229 + 26.29; thence N. 67° 20′ 30″ W. 939.15 feet to Engineer's Station 238 + 65.44; thence along a curve to the right of radius of 2000 feet; 379.12 feet to Engineer's Station 242 + 44.56; thence N. 56° 29′ 10″ W. 815.87 feet to Engineer's Station 250 + 60.43, being a point on the westerly boundary line of fractional Section 6, from which the meander corner of Lot 1, Section 6, T. 3 N. R. 4 W., M. D. B. & M., bears S. 0° 01′ E. 352.63 feet along said Section line, said strip of land containing 6.82 acres, more or less. Excepting also that portion lying within County Road.

Defendant Pacific Gas and Electric Company is the owner of the right of way and easement for transmission line purposes over the above described

lands granted by the right of way deed mentioned in paragraph (a) of this Exhibit A.

(c) Defendant Sears Point Toll-Road Co., a corporation, is the owner in fee simple absolute (subject to the Trust Indenture and Supplemental Trust Indenture to defendant American Trust Company hereinafter mentioned) of all that certain real property situate, lying and being in the County of Solano, State [265] of California, and more particularly described as follows, to-wit:

Parcel "D":

Tract (1) Beginning at the Meander corner of the United States Public Land Surveys, common to Tract No. 38 (Mare Island Navy Yard) and fractional Section 10 T. 3 N. R. 4 W. Mount Diablo Base and Meridian, on the westerly bank of Napa River; and running thence S. 64° 45′ W. 1090.32 feet along the Northern boundary line of said Tract No. 38 to an angle point in said boundary line; thence continuing along said boundary line N. 89° 56′ 30″ W. 1950 feet to the most northwesterly corner of said Tract No. 38; thence, leaving said boundary line, N. 0° 03′ 30″ E. 170.42 feet to a point 95 feet northerly at right angles from the surveyed line for the Toll Road of Sears Point Toll Road Co. at Engineers Station 58 + 72.79 thereof; thence S. 89° 56′ 30″ E. 1416.69 feet; thence along a curve to the left of radius 870 feet, 384.13 feet; thence North 64° 45′ E. to the line of mean lower low water along the

westerly bank of Napa River; thence southerly along said line of mean lower low water to the point of intersection thereof with a line extending N. 64° 45′ E. through said Meander Corner; and thence S. 64° 45′ W. along the last described line extending through said Meander Corner to the point of beginning; containing 15.09 acres (more or less); and being a portion of said fractional section 10 and the accretion on the Napa River frontage, and being a portion of Swamp and Overflow Land Survey No. 569, Solano County, California.

Tract (2) A strip of land of the uniform width of 160 feet, described as follows, to-wit:

Beginning at a point 65′ distant, measured southerly at right angles to the surveyed line hereinafter described, from Engineers Station 58 + 72.79 of the surveyed line for the Toll Road of Sears Point Toll Road Co., said point being N. 0° 03′ 30″ E. 10.42 feet distant from the most northwesterly corner of Tract 38, U. S. Public Land Surveys (Mare Island Navy Yard) and being on the westerly boundary of Tract No. 1, hereinabove described; and running thence parallel to said surveyed line, N. 89° 56′ 30″ W. 1431.84 feet to a point from which the corner common to fractional sections 9, 10, 15 and 16, T. 3 N. R. 4 W. M. D. B. & M., bears S. 0° 03½′ W. 1281.05 feet distant; thence continuing on the same course, N. 89°

56′ 30″ W. 1175.70 feet; thence westerly along a curve to the right having a radius of 1030 feet, for a distance of 577.05 feet; thence N. 32° 09′ 30″ E. 160 feet; thence easterly along a curve to the left for a distance of 487.42 feet, said curve having a radius of 870 feet, and being parallel to the southerly boundary above described; thence S. 89° 56′ 30″ E. 2607.54 feet, to a point 95′ distant, measured at right angles to said surveyed line, northerly from said Engineers Station 58 + 72.79 of said surveyed line; thence southerly 160 feet at right angles to said surveyed line to the point of beginning; situate in and being a part of fractional section 9 and 10, T. 3 N., R. 4 W. M. D. B. & M., and being a part of Swamp and Overflow Land Survey No. 569, Solano County, California, and containing 11.64 acres (more or less). [266]

Tract (3) Beginning at the most southwesterly corner of Tract 2 of Parcel D described above; and running thence N 32° 09′ 30″ E. along the westerly boundary of said Tract No. 2, for a distance of 130 feet to a point on said boundary; thence N 57° 50′ 30″ W. 2455.46 feet; thence along a curve to the left having a radius of 10,100 feet for a distance of 540.59 feet; thence N 60° 54′ 30″ W. 2149.57 feet; thence along a curve to the left having a radius of 20,100 feet for a distance of 321.58 feet; thence N 61° 49′ 30″ W. 1622.51 feet; thence

along a curve to the left having a radius of 20,100 feet for a distance of 923.84 feet; thence N 64° 27′ 30″ W. 986.52 feet; thence along a curve to the right having a radius of 9,900 feet for a distance of 492.45 feet; thence N 61° 36′ 30″ W. 1332.62 feet to a point which bears N 28° 23′ 30″ E. 100 feet distant from Engineers Station 198 + 67.0 of the survey for Toll Road as surveyed for Sears Point Toll Road Co., thence S 28° 23′ 30″ W. 130 feet; thence S 61° 36′ 30″ E., 1332.62 feet; thence along a curve to the left having a radius of 10,030 feet for a distance of 498.91 feet; thence S 64° 27′ 30″ E. 986.52 feet; thence along a curve to the right having a radius of 19,970 feet for a distance of 917.86 feet; thence S 61° 49′ 30″ E. 1622.51 feet; thence along a curve to the right having a radius of 19,970 feet for a distance of 318.49 feet; thence S 60° 54′ 30″ E. 2149.57 feet; thence along a curve to the right having a radius of 9,970 feet for a distance of 533.63 feet; thence S 57° 50′ 30″ E. 2455.46 feet to the point of beginning; said parcel being a strip of land of a uniform width of 130 feet extending from the westerly boundary of Tract No. 2, hereinbefore described, to a line at right angles to the surveyed line of Toll Road for Sears Point Toll-Road at Engineers Station 198 + 67 thereof, and said Tract No. 3, containing 32.29 acres more or less.

Tract (4) A strip of land of the uniform width of 160 feet, extending from the westerly boundary line of Tract No. 3, hereinbefore described, which is a line at right angles to the surveyed line for the Toll Road of Sears Point Toll Road Co. at Engineers Station 198 + 67 thereof, to the westerly boundary line of the lands now or formerly belonging to Eva L. Ricks, said boundary line of the lands of Eva L. Ricks being the easterly boundary line of the West one-half of fractional section 6 T. 3 N. R. 4 W. Mount Diablo Base and Meridian, and is the division line between said lands of Eva L. Ricks and lands now or formerly belonging to Henry Claude Kettleman, the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from said surveyed line for Toll Road between said line at right angles to said surveyed [267] line of Engineers Station 198 + 67 and said easterly boundary line of the West one-half of fractional section 6, the point of intersection of said one-half section line and said surveyed line for Toll Road being Engineers Station 220 + 91.13 thereof, the northerly boundary line of said strip being parallel to and 130 feet distant at right angles northerly from said surveyed line for Toll Road between said line at right angles to said surveyed line at Engineers Station 198 + 67 and said easterly boundary line of the West one-half of fractional section 6; said strip

of land containing 8.17 acres (more or less) situate in and being a part of the East one-half of said fractional section 6 T. 3 N. R. 4 W. Mount Diablo Base and Meridian and of Swamp and Overflow Land Survey No. 569, Solano County, California; the portion of said surveyed line hereinabove mentioned being described as follows, to-wit: Beginning at Engineers Station 198 + 67 and running thence N 61° 36′ 30″ W. 433.40 feet to Engineers Station 202 + 90.40; thence northwesterly along a curve to the left, of radius 2000 feet, 244.93 feet to Engineers Station, 205 + 35.33; thence N. 68° 37′ 30″ W. 718.34 feet to Engineers Station 212 + 53.67; thence northwesterly along a curve to the right, or radius 10000 feet, 485.75 feet to Engineers Station 217 + 39.42; thence N 65° 50′ 30″ W. 351.71 feet to Engineers Station 220 + 91.13 a point on the easterly line of the West one-half of fractional section 6 T. 3 N. R. 4 W. Mount Diablo Base and Meridian; the beginning point of the above described portion of said survey line for Toll Road being located and defined as follows, to-wit: Commencing at the meander corner common to fractional sections 5 and 6 T. 3 N. R. 4 W. Mount Diablo Base and Meridian; and running thence N 0° 06′ W. 403.5 feet to Engineers Station 191 + 68.70 of said surveyed line for Toll Road, thence along said surveyed line N 61° 36′ 30″ W.

698.30 feet, to said Engineers Station 198 + 67, to the point of beginning.

Parcel "E": A strip of land of the uniform width of 100 feet extending from the easterly boundary line of the West ½ of fractional Section 6, T. 3 N. R. 4 W. M. D. M., to the westerly boundary line thereof, the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from the surveyed line for the Toll Road of Sears Point Toll Road Co. and the northerly boundary line of said strip being parallel to and 70 feet distant at right angles northerly from said surveyed line of Toll Road, said surveyed line for Toll Road of Sears Point Toll Road Co. being as described in the survey and description of the route and of the land necessary for the said Toll Road, recorded by the Commissioners in the Matter of the said Toll [268] Road in the Office of the County Clerk of Solano County, California, April 15th, 1926, and reported to and approved by the Board of Supervisors of said Solano County on the said 15th day of April, 1926, and entered of record in the journal of the said Board of Supervisors, the portion of said surveyed line hereinabove referred to being described as follows, to-wit:

Beginning at a point of intersection of said easterly boundary line of the West ½ of fractional section 6, with said surveyed line, said point being Engineers' Station 220 + 91.13

of said surveyed line, and running thence N 65° 50′. 30″ W. 311.56 feet to Engineers' Station 224 + 02.69, thence along a curve to the left of radius 20,000 feet, 523.60 feet to Engineers' Station 229 + 26.29, thence N 67° 20′ 30″ W. 939.15 feet to Engineers' Station 238 + 65.44, thence along a curve to the right of radius of 2000 feet, 379.12 feet to Engineers' Station 242 + 44.56, thence N 56° 29′ 10″ W. 815.87 feet to Engineers' Station 250 + 60.43 being a point on said westerly boundary line of fractional section 6, from which the meander corner of Lot 1, Sec. 6, T. 3 N. R 4 W, M. D. B. & M., bears S 0° 01′ E. 352.63 feet along said Section line, said strip of land containing 6.82 acres, more or less.

Parcel "F": A strip of land of the uniform width of 100 feet extending from the westerly boundary line of Fractional Section 6, T. 3 N. R. 4 W., M. D. B. & M., to the easterly boundary line of lands now or formerly belonging to Bay Land Company, the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from the surveyed line for the Toll Road of Sears Point Toll Road Co. and the northerly boundary line of said strip being parallel to and 70 feet distant at right angles northerly from said surveyed line for Toll Road, said surveyed line for Toll Road of Sears Point Toll Road Company being as described in the survey and description

of the route and of the land necessary for the said Toll Road, recorded by the Commissioners in the matter of the said Toll Road, in the Office of the County Clerk of Solano County, California, April 15, 1926, and reported to and approved by the Board of Supervisors of said Solano County on the said 15th day of April 1926, and entered of record on the journal of the said Board of Supervisors, the portion of said surveyed line hereinabove referred to being described as follows, to-wit:

Beginning at the point of intersection of said westerly boundary line of fractional section 6 which line bears S 0° 01′ E. with said surveyed line for Toll Road at Engineers' Stationn 250 + 60.43 thereof from which Station the meander corner of Lot 1, Sec. 6, T. 3 N. R. 4 W., M. D. B. & M., bears [269] S 0° 01′ E. 352.63 feet distant, and running thence along said surveyed line N 56° 29′ 10″ W. 127.57 feet to Engineers' Station 251 + 88, thence along a curve to the left of radius 2000 feet, 68.55 feet to Engineers' Station 252 + 56.55 being a point on the said easterly boundary line of lands now or formerly belonging to Bay Land Company, which line bears N 0° 07½′ W. said strip of land containing 0.45 acres, more or less.

Parcel "G": A strip of land of the uniform width of 100 feet extending from the westerly boundary line of lands now or formerly belonging to John C. Brickell which line bears

N 0° 07½′ W. to the easterly boundary line of lands now or formerly belonging to Field and Tule Land Company which line bears N 0° 32½′ W. the southerly boundary line of said strip being parallel to and 30 feet distant at right angles southerly from the surveyed line for the Toll Road of Sears Point Toll Road Company, and the northerly boundary line of said strip of land being parallel to and 70 feet northerly at right angles from said surveyed line for Toll Road; said surveyed line for Toll Road of Sears Point Toll Road Co. being as filed in the office of the County Clerk of Solano County, California, on the 15th day of April 1926, the portion of said surveyed line hereinabove referred to being described as follows, to-wit:

Beginning at Engineers Station 252 + 56.35 being a point on said westerly boundary line of lands of John C. Brickell and running thence along a curve to the left of radius 2000 feet, 293.71 feet to Engineers Station 255 + 50.06; thence N 66° 51′ 30″ W., 2929.94 feet to Engineers Station 284 + 80, being a point on said easterly boundary line of lands of Field and Tule Land Company; said strip of land containing 7.40 acres (more or less) situated in and being a portion of Swamp and Overflow Land Survey No. 569, Solano County, California, said point of beginning, station 252 + 56.35 being located and defined as follows,

to-wit: Commencing at the Meander Corner common to fractional section 6, T 3 N. R 4 W., and fractional section 1, T 3 N, R 5 W., Mount Diablo Base and Meridian and running thence N 0° 01′ W., 352.63 feet to Engineers Station 250 + 60.43 of said surveyed line of Toll Road, thence along said line N 56° 29′ 10″ W. 127.57 feet to Engineers Station 251 + 88; thence along a curve to the left of radius 2000 feet, 68.55 feet to said point of beginning, also the right to take from the 60 feet next adjoining the North boundary of said right of way, the material necessary for road construction and maintenance.

Parcel "H":

Tract (1). A strip of land of the uniform width of 100 feet extending from the westerly line of lands now or formerly belonging to Bay Land Com- [270] pany, which line bears North 0° 32½′ West, to the easterly line of lands now or formerly belonging to West End Land Company, which line bears North 0° 7½′ West, the southerly boundary line of said strip being parallel to and thirty feet distant at right angles southerly from the surveyed line for the Toll-Road of Sears Point Toll-Road Co., and the northerly boundary line of said strip being parallel to and 70 feet distant at right angles northerly from said surveyed line for Toll-Road, the portion of said surveyed line hereinabove referred to being described as follows.

to-wit: Beginning at the point of intersection of said westerly line of land of Bay Land Company with said surveyed line at Engineers Station 284. + 80 thereof, and running thence North 66° 51′ 30″ West 167.89 feet to Engineers Station 286 + 47.89, thence along a curve to the right having a radius of 2000 feet for a distance of 270.43 feet to Engineers Station 289 + 18.32, thence North 59° 06′ 40″ West, 817.35 feet to Engineers Station 297 + 35.67, thence along a curve to the left having a radius of 2000 feet for a distance of 430.15 feet to Engineers Station 301 + 65.82; thence North 71° 26′ West 1527.36 feet to Engineers Station 316 + 93.18, thence along a curve to the right having a radius of 1000 feet for a distance of 365.96 feet to Engineers Station 320 + 59.14, thence North 50° 28′ West 336.31 feet to Engineers Station 323 + 95.45, thence along a curve to the left having a radius of 3000 feet for a distance of 352.99 feet to Engineers Station 327 + 48.44, thence North 57° 12′ 30″ West 1014.2 feet to Engineers Station 337 + 62.64, being a point on said easterly line of lands of West End Land Company, said point of beginning being located and defined as follows, to-wit: Commencing at the meander corner common to fractional section 6, Township 3 North, Range 4 West and fractional Section 1, Township 3 North, Range 5 West, Mount

Diablo Base and Meridian, and running thence North 0° 01′ West 352.63 feet to Engineers Station 250 + 60.43 on said surveyed line of Toll-Road, thence along said surveyed line North 56° 29′ 10″ West 127.57 feet to Engineers Station 251 + 88, thence along a curve to the left having a radius of 2000 feet for a distance of 362.06 feet to Engineers Station 255 + 50.06, thence North 66° 51′ 30″ West, 2929.94 feet to Engineers Station 284 + 80, being said point of beginning, said strip of land containing 12.12 acres (more or less) situate in and being a portion of Swamp and Overflow Land Survey No. 569, Solano County, California.

Tract (2) The right or easement to take earth and soil for the construction, maintenance and repair of the Toll Road to be constructed by Sears Point Toll-Road Co.,—extending along the [271] property described as Tract (1) of Parcel "H" above, from that certain parcel of land described as follows, to-wit:

A strip of land of the uniform width of 60 feet, extending the entire length of the property above described, the southerly boundary of said strip of land being the northerly boundary of Tract (1) of Parcel "H" described, and the northerly boundary of said strip of land hereby described being parallel to and 60 feet distant at right angles northerly at all points from said northerly boundary of (Tract

(1) of Parcel "H" above described); containing 7.28 acres, more or less.

Parcel "I": All that portion of that certain real property situated in the County of Solano, State of California, described as follows, to-wit:

Tract (1) A strip of land of the uniform width of 100 feet extending from the westerly boundary line of the lands now or formerly belonging to the Field and Tule Land Company, which line bears N. 0° 07½′ West to the line of mean lower low water in Sonoma Creek, the southerly boundary of said strip of land being parallel to and thirty feet distant at right angles southerly from the surveyed line for the Toll-Road of Sears Point Toll Road Co., and the northerly boundary of said strip of land being parallel to and distant one hundred feet at right angles northerly from said southerly boundary of the herein described strip of land, the portion of said surveyed line hereinabove referred to being described as follows, to-wit: Beginning at the point of intersection of the westerly line of said lands now or formerly belonging to Field and Tule Land Company with the said surveyed line of Toll-Road at Engineers Station "C" 337 + 62.64, and running thence North 57° 12′ 30″ W. 1205.92 feet to Engineers Station "C" 349 + 68.56, thence along a curve to the left having a radius of 3000 feet for a distance of 635.23 feet to Engineers Station "C" 356 + 03.79 which equals

Station 356 + 18.87, thence North 69° 20′ 30″ West, 194.25 feet to Engineers Station 358 + 13.12, thence along a curve to the left, having a radius of 2000 feet, for a distance of 92.02 feet to Engineers Station 359 + 05.14, thence North 71° 58′ 40″ West 1326.40 feet to Engineers Station 372 + 31.54, thence along a curve to the left having a radius of 2000 feet for a distance of 157.46 feet to Engineers Station 373 + 89, thence North 76° 29′ 20″ West, 1981.20 feet to Engineers Station 393 + 70.20, thence along a curve to the right having a radius of 2000 feet for a distance of 457.67 feet to Engineers Station 398 + 27.87, thence North 63° 22′ 40″ West, 1034.44 feet to Engineers Station 408 + 62.31, thence along a curve to the left having a radius of 1000 feet for a distance of 471.33 feet to Engineers Station 413 + 33.64, thence South 89° 37′ [272] West parallel to the northerly boundary of Solano County, 48.42 feet to Engineers Station 413 + 82.06, which equals Station 413 + 91.11, from which Station a 6″ x 6″ post on said County boundary bears North 43° 34′ West, 86.2 feet; thence continuing on said course South 89° 37′ West parallel to and distant 62 feet at right angles southerly from said northerly boundary line of Solano County to the line of mean lower low water on the easterly side of Sonoma Creek, the beginning point of said portion of surveyed line, Station 337 + 62.64, being located and

defined as follows, to-wit: Commencing at the meander corner on the westerly boundary line of fractional section 6, T 3 N, R 4 W, Mount Diablo Base and Meridian, and running thence North 0° 01′ West, 352.63 feet to Engineers Station 250 + 60.43, on said surveyed line of Toll-Road, thence along said surveyed line North 56° 29′ 10″ West, 127.57 feet to Engineers Station 251 + 88, thence along a curve to the left having a radius of 2000 feet for a distance of 362.06 feet to Engineers Station 255 + 50.06, thence North 66° 51′ 30″ West, 3097.83 feet to Engineers Station 286 + 47.89, thence along a curve to the right having a radius of 2000 feet for a distance of 270.43 feet to Engineers Station 289 + 18.32; thence North 59° 06′ 40″ West, 817.35 feet to Engineers Station "C" 297 + 35.67, thence along a curve to the left having a radius of 2000 feet for a distance of 430.15 feet to Engineers Station "C" 301 + 65.82, thence North 71° 26′ West 1527.36 feet to Engineers Station "C" 316 + 93.18, thence along a curve to the right having a radius of 1000 feet for a distance of 365.96 feet, to Engineers Station "C" 320 + 59.14, thence North 50° 28′ West 386.21 feet to Engineers Station "C" 323 + 95.45, thence along a curve to the left having a radius of 3000 feet for a distance of 352.99 feet to Engineers Station "C" 327 + 48.44, thence North 57° 12′ 30″ West, 1014.20 feet to Engineers Station "C" 337 + 62.64,

being a point on the easterly line of lands of West End Land Company, and being said point of beginning; said above described strip of land containing 18.20 acres (more or less) situate in and being a part of Swamp and Overflow Survey No. 569, Solano County, California.

Tract (2) The right or easement to take earth and soil for the construction, maintenance and repair of the Toll-Road to be constructed by Sears Point Toll-Road Co., extending along the property described in Tract (1) of Parcel "I" above, from that certain parcel of land described as follows, to-wit:

A strip of land of the uniform width of 60 feet extending from the westerly boundary line of lands now or formerly belonging to the Field and Tule Land Company, which line bears North 0° 7½′ West, to the line of mean lower [273] low water in Sonoma Creek, the southerly boundary line of said strip of land being the northerly boundary of Tract (1) in Parcel "I" above described, and the northerly boundary of said strip of land hereby described being parallel to and 60 feet distant at right angles northerly at all points from the above described southerly boundary of said strip of land hereby described, containing 10.92 acres, more or less.

Defendant American Trust Company, a corporation, is the owner and holder of the interest in the above described real property conveyed to it under that

certain Trust Indenture from Sears Point Toll-Road Co. to American Trust Company dated as of June 1, 1926, and recorded on March 1, 1927 in the office of the County Recorder of said County of Solano, State of California, in Liber 43 of Trust Deeds at page 205, and under and by virtue of that certain Supplemental Trust Indenture dated as of June 1, 1927, and recorded on June 29, 1927, in the office of said County Recorder of said County of Solano, State of California, in Liber 292 of Deeds at page 403.

(d) Defendant Bay Land Company, a corporation, is the owner in fee simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain real property situate, lying and being in the Counties of Napa and Solano, State of California, more particularly described as follows, (excepting from the land described those portions thereof lying in Section 25, Township 4 North, Range 5 West and Section 30, Township 4 North, Range 4 West, M. D. B. & M.), to-wit:

> Beginning at a point on the boundary line between Solano and Napa Counties, which point is on the West line of Section 31, Township 4 North, Range 4 West, Mount Diablo Base and Meridian, as said section line was re-established by E. N. Eager, County Surveyor, in February 1915, and is 397.25 chains West of the West line of Section 36, in Township 4 North, Range 4 West, Mount Diablo Base and Meridian; thence from said point of beginning South

102.90 chains to the shore of San Pablo Bay; thence along said shore line in a westerly direction about 48 chains to a point [274] which is 44.00 chains West of the West line of said Section 31; thence North 0° 25' West 66.40 chains to the middle of South Slough, at a point which is 44.50 chains West of the West line of said Section 31; thence along the middle of said South Slough in a northerly direction about 18 chains to the County boundary line; thence follow the middle of said South Slough, northerly, easterly and southerly about 150 chains to said County boundary line again; thence along same North 89° 25' West 14.50 chains to the place of beginning.

Containing 630.50 acres, more or less.

Excepting therefrom that portion of the above described tract heretofore conveyed to Sears Point Toll-Road Co.

Defendant Pacific Gas and Electric Company is the owner of the right of way and easement for transmission line purposes over the above described lands granted by the right of way deed mentioned in paragraph (a) of this Exhibit A.

(e) Defendant Field and Tule Land Company, a corporation, is the owner in fee simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain real property situate, lying and being in the Counties of Napa and Solano, State of California, more particularly

described as follows (excepting from the land described that portion thereof lying in Section 25, Township 4 North, Range 5 West, M. D. B. & M.), to-wit:

Commencing at a point on the boundary line between said Solano and Napa Counties, which point is 154.25 chains West of the quarter-section line running North and South through the middle of Section 31, Township 4 North, Range 4 West, Mount Diablo Base and Meridian, which said quarter-section line was re-established by E. N. Eager, County Surveyor, in February, 1915, and is 357.25 chains West of the West line of Section 36, Township 4 North, Range 4 West, Mount Diablo Base and Meridian; thence from said point of commencement North 14.40 chains to the South bank of Huichica Creek; thence along same in an easterly direction about 63 chains to the middle of South Slough; thence along said South Slough, southerly and easterly about 42 chains to a point which is 84.50 chains West of said quarter-section line running North and South through the [275] middle of said Section 31; thence South 0 degrees 25 minutes E. 66.40 chains to the shore of San Pablo Bay; thence along said shore line northwesterly about 61 chains to the southeasterly corner of that certain 472.46 acre tract of land conveyed by John C. Brickell (an unmarried man) to Bay Land Company, a corporation, by deed dated May 20,

1921, and recorded in the office of the County Recorder of the County of Solano on June 17, 1921, in Liber 254 of Deeds at page 453 and also recorded in the office of the County Recorder of the County of Napa on June 21, 1921, in Liber 132 of Deeds at page 260, and thence North and along the East boundary of land so conveyed to Bay Land Company 45 chains to the point of commencement, containing 500 acres.

Excepting therefrom that portion of the above described tract heretofore conveyed to Sears Point Toll-Road Co.

Defendant Pacific Gas and Electric Company is the owner of the right of way and easement for transmission line purposes over the above described lands granted by the right of way deed mentioned in paragraph (a) of this Exhibit A.

(f) Defendant West End Land Company, a corporation, is the owner in fee simple absolute (subject to the right of way and easement hereinafter mentioned) of all that certain real property situate, lying and being in the Counties of Napa and Solano, State of California, more particularly described as follows, to-wit:

Beginning at a point on the boundary line between Solano and Napa Counties, which point is 154.25 chains West of the quarter Section line running North and South through the middle of Section 31, Township 4 North, R. 4

West, M. D. B. & M., and which quarter section line was re-established by E. N. Eager, County Surveyor in February and is 357.25 chains West of the West line of Section 36, in Township 4 North, Range 4 West, M. D. B. & M., thence from said point of beginning, North 14.40 chains to the South bank of the Euichica Creek; thence along same westerly about 125 chains to the County boundary line, at a point about 1.75 chains West of a County boundary post and about 109.17 chains westerly from the point of beginning; thence along the shore line of San Pablo Bay, southeasterly about 120 chains and thence North about 45 [276] chains to the place of beginning, containing 472.46 acres, more or less.

Excepting therefrom property sold to Sears Point Toll Road Co., by deed dated November 19, 1926, and recorded April 1, 1927, in Book 288 of Deeds, page 446, described as follows:

Parcel No. 1: A strip of land of the uniform width of 100 feet extending from the westerly boundary line of the lands now or formerly belonging to the Field and Tule Land Company, which line bears N. 0° 07½′ W. to the line of a mean low water in Sonoma Creek, the southerly boundary of said strip of land being parallel to and 30 feet distant at right angles southerly from the surveyed line for the toll road of Sears Point Toll Road Co., and the northerly boundary of said strip of land being

parallel to and distant 100 feet at right angles northerly from said southerly boundary of the herein described strip of land, the portion of said surveyed line hereinabove referred to being described as follows, to-wit:

Beginning at the point of intersection of the westerly line of said lands now or formerly belonging to Field and Tule Land Company with the said surveyed line of Toll-Road at Engineers Station "C" 337 + 62.64 and running thence N. 57° 12′ 30″ W. 1205.92 feet to Engineer's Station "C" 349 + 68.56; thence along a curve to the left, having a radius of 3000 feet for a distance of 635.23 feet to Engineer's Station "C" 356 + 03.79 which equals Station 356 + 18.87; thence N. 69° 20′ 30″ W. 194.25 feet to Engineers Station 358 + 13.12; thence along a curve to the left having a radius of 2000 feet, for a distance of 92.02 feet to Engineers Station 359 + 05.14; thence N. 71° 58′ 40″ W. 1326.40 feet to Engineers Station 372 + 31.54; thence along a curve to the left having a radius of 2000 feet for a distance of 157.46 feet to Engineers Station 373 + 89; thence N. 76° 29′ 20″ W. 1981.20 feet to Engineers Station 393 + 70.20; thence along a curve to the right having a radius of 2000 feet for a distance of 457.67 feet to Engineers Station 398 + 27.67; thence N. 63° 22′ 40″ W. 1034.44 to Engineers Station 408 + 62.31; thence along a curve to the left having a radius

of 1000 feet for a distance of 471.33 feet to Engineers Station 413 + 33.64; thence S. 89° 37′ W. parallel to the northerly boundary of Solano Co., 8.42 feet to Engineers Station 413 + 82.06, which equals Station 413 + 91.11 from which Station a 6″ x 6″ post on said County boundary bears N. 43° 34′ W. 86.2 feet; thence continuing on said course S. 89° 37′ West parallel to and distant 62 feet at right angles southerly from said northerly boundary line of Solano County to the line of mean low water on the easterly side of Sonoma Creek, the beginning point of said portion of Surveyed line, Station 337 + 62.64 being located and defined as follows, to-wit: [277]

Commencing at the meander corner on the westerly boundary line of fraction Section 6, T. 2 N. R. 4 W. M. D. B. & M., and running thence N. 0° 01′ W. 352.63 feet to Engineers Station 250 + 60.43 on said surveyed line of Toll Road; thence along said surveyed line N. 56° 29′ 10″ W. 127.57 feet to Engineers Station 251 + 88; thence along a curve to the left having a radius of 2000 feet for a distance of 362.06 feet to Engineers Station 255 + 60.06; thence N. 66° 51′ 30″ W. 3097.83 feet to Engineers Station 286 + 47.89; thence along a curve to the right having a radius of 2000 feet for a distance of 270.43 feet to Engineers Station 289 + 18.32; thence N. 59° 06′ 40″ W. 817.35 feet to Engineers Station "C" 297 + 35.67; thence along

a curve to the left having a radius of 2000 feet for a distance of 430.15 feet to Engineers Station "C" 301 + 65.32; thence N. 71° 26′ W. 1527.36 feet to Engineers Station "C" 316 + 93.18; thence along a curve to the right having a radius of 1000 feet for a distance of 365.96 feet to Engineers Station "C" 320 + 59.14; thence N. 50° 28′ W. 336.31 feet to Engineers Station "C" 323 + 95.45; thence along a curve to the left having a radius of 3000 feet, for a distance of 352.99 feet to Engineers Station "C" 327 + 48.44; thence N. 57° 12′ 30″ W. 1014.20 feet to Engineers Station "C" 337 + 62.64 being a point on the easterly line of lands of West End Land Company, and being said point of beginning, said above described strip of land containing 18.20 acres, more or less, situate in and being a part of Swamp and Overflowed Survey No. 569, Solano County, Cal.

Also Excepting Parcel #2. The right or easement to take earth and soil for the construction, maintenance and repair of the Toll-Road to be constructed by the party of the first part, extending along the property described in Parcel 1 above, from that certain parcel of land described as follows, to-wit:

A strip of land of the uniform width of 60 feet extending from the westerly boundary line of land now or formerly belonging to the Field and Tule Land Company, which line bears N.

0° 7½′ W. to the line of mean low water in Sonoma Creek, the southerly boundary line of said strip of land being the northerly boundary of Parcel 1 above described, and the northerly boundary of said strip of land hereby described being parallel to and 60 feet distant at right angles northerly at all points from the above described southerly boundary of said strip of land hereby described, containing 10.92 acres, more or less.

Defendant Pacific Gas and Electric Company is the owner of the right of way and easement for transmission line purposes over [278] the above described lands granted by the right of way deed mentioned in paragraph (a) of this Exhibit A.

Receipt of the within Judgment and receipt of a copy thereof admitted this first day of September, 1939.

FRANK J. HENNESSY,
United States Attorney.
ESTHER B. PHILLIPS,
Assistant United States Attorney.
By R. B. McMILLAN,
Asst. U. S. Attorney.

[Endorsed]: Filed and Entered Nov. 1, 1939.

[279]

[Title of District Court and Cause.]

MOTION TO AMEND FINDINGS

To Defendants above-named and to Messrs. McCutchen, Olney, Mannon & Greene, S. H. Spaulding, and Stoney, Rouleau, Stoney & Palmer:

You, and each of you, will please take notice that on Monday, November 13, 1939, the complainant will ask the Court to rule upon its motion to amend findings attached hereto.

Dated: November 9, 1939.

FRANK J. HENNESSY,
United States Attorney.
ESTHER B. PHILLIPS,
Assistant United States Attorney. [280]

[Title of District Court and Cause.]

MOTION TO AMEND FINDINGS

Now comes the complainant, and without waiving its objections to all of defendants' proposed findings and conclusions of law, which have been adopted and signed by this Court and filed herein on November 1, 1939, and without waiving its objection to the failure of this Court to adopt all of plaintiff's proposed findings and conclusions of law, moves this Court, pursuant to the provisions of Rule 52 (b) of the Federal Rules of Civil Procedure, to amend its findings filed herein by striking therefrom all parts of Paragraphs 3, 5, 6, 7, 8, and 10, relating to this Court's finding of fact that

the lands involved are not, and were never, physically a part of Mare Island, for the reason that said findings are not supported by and are contrary to the facts, set forth erroneous conclusions of law, and are contrary to the findings of fact of this Court in the case of United States v. O'Donnell, et al.

In lieu thereof complainant moves this Court to adopt the proposed findings of fact of complainant, dealing with complainant's contention that the lands involved were and are physically a part of Mare Island, and included within the Castro grant, to-wit: Paragraphs IV, V, VI, VII, VIII, IX, X, XI and XIX; and complainant respectfully asks that the judgment of this Court, entered on November 1, 1939, be amended accordingly.

Complainant also respectfully requests this Court that it be granted a hearing at the convenience of the Court upon this motion.

FRANK J. HENNESSY,
United States Attorney.
ESTHER B. PHILLIPS,
Assistant United States Attorney

Service of the within motion by copy admitted this 9th day of Nov. 1939.

HENRY E. MONROE,
J. M. MANNON, JR.,
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
Attorneys for Defendant.
Mary W. Stewart, et al.

[Endorsed]: Filed Nov. 9, 1939. [281]

District Court of the United States, Northern District of California, Southern Division

[Title of District Court.]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 13th day of November, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: the Honorable A. F. St Sure, District Judge.

[Title of Cause.]

After hearing Miss Esther B. Phillips, Assistant U. S. Attorney, and Mr. Lippman, attorney for defendants, ordered motion to amend findings denied. [282]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Now comes the United States of America, appearing by its Attorneys, and hereby gives notice that the complainant above-named hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on November 1, 1939, and from the whole thereof.

Dated: January 29, 1940.

ROBERT H. JACKSON,
Attorney General.

N. M. LITTELL,
Assistant Attorney General.

FRANK J. HENNESSY,
United States Attorney for the Northern District of California.

[Endorsed]: Filed Jan. 29, 1940. [284]

[Title of District Court and Cause.]

ORDER ALLOWING TIME FOR DESIGNATION OF CONTENTS OF RECORD ON APPEAL AND FOR DOCKETING RECORD ON APPEAL.

Good Cause being shown, and upon motion of the United States Attorney for the Northern District of California,

It is Hereby Ordered that the United States of America may have to and including April 27, 1940 within which to file its designation of the proceedings and evidence to be contained in the record on appeal and to docket the record on appeal in the above-entitled case.

Dated: February 23, 1940.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Feb. 23, 1940. [285]

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL OF THE ORIGINAL MAPS, PAPERS AND EXHIBITS TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Upon consideration of the original documents, papers, maps, etc. offered in evidence upon the trial of the above-entitled cause,

It Is Hereby Ordered that the Clerk of this Court transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with proper certification, all of said original documents, papers, maps, etc. offered in evidence in the above-entitled cause, including those subsequently stricken out, for use in connection with the appeal of said cause, excepting, however, the judgment roll, and certified copy of appointment of A. L. Rhodes, as Special Assistant Attorney for the United States in the case of Bouldin, et al. v. Phelps, reported in 30 Federal Reports 547.

Dated: April 9, 1940.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed April 9, 1940. [286]

[Title of District Court and Cause.]

DESIGNATION OF THE RECORD ON APPEAL

The complainant above-named, having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered herein on November 1, 1939, hereby designates the following parts of the record, proceedings and evidence for inclusion in the record on appeal, in conformance with Rule 75 (a) of the Federal Rules of Civil Procedure:

(1) The Amended Bill of Complaint filed May 21, 1931, and

(2) The "Amendments to Amended Bill of Complaint" filed May 23, 1932.

(3) Answer of Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company and West End Land Company Filed February 14, 1936.

(4) First Amendment to said answer filed May 25, 1937.

(5) Second Amendment to said answer filed June 15, 1937.

(6) Answer of James Irvine filed March 18, 1936.

(7) First amendment to said answer filed May 25, 1937. [287]

(8) Second amendment to said answer filed June 15, 1937.

(9) Order substituting Meta S. Healy as party defendant in place of W. H. Healy, deceased, filed April 20, 1936.

(10) Order of Dismissal with prejudice as to defendants Russ Investment Company, Henry A. Kendall, Joseph Dubeault, Wilfred Dubeault and Charles J. Monahan, filed April 9, 1937.

(11) Order of Dismissal as to defendant Meta S. Healy, filed May 26, 1937.

(12) Stipulation in lieu of Answer filed on behalf of defendant Pacific Gas & Electric Company, filed August 30, 1939.

(13) Reporter's Transcript of the Testimony and Evidence adduced at the trial.

(14) The Opinion of the Trial Court, filed August 24, 1939.

(15) Rulings on certain motions and objections, filed August 24, 1939.

(16) Complainant's objections to Defendants' Proposed Findings of Fact and Conclusions of Law, and Complainant's Proposed Findings of Fact and Conclusions of Law, Filed November 1, 1939.

(17) Order allowing Complainant time to file objections to defendants' proposed findings, filed November 1, 1939.

(18) The Findings of Fact and Conclusions of Law as signed by the Court, filed November 1, 1939.

(19) Judgment for defendants filed November 1, 1939.

(20) Complainant's motion to amend Findings filed November 9, 1939.

(21) Order denying Complainant's motion to amend findings, filed November 13, 1939.

(22) Notice of Appeal filed January 29, 1940.

(23) Order entered February 23, 1940, extending the time within which to file the designation of the record on appeal and to docket the record.

(24) Order transmitting original exhibits to the Clerk of the Circuit Court of Appeals for the Ninth Circuit and to be held by him for use in connection with said appeal. [288]

(25) Original exhibits offered in evidence herein with proper certification thereon by the Clerk of this Court.

(26) This designation of the Record on Appeal.

FRANK J. HENNESSY,
United States Attorney.
ESTHER B. PHILLIPS,
Assistant United States Attorney
Attorneys for Appellant.

Service of the within designation by copy admitted this 9th day of April, 1940.

McCUTCHEN, OLNEY, MANNON & GREENE
Attorneys for certain defendants.

Service of the within designation by copy admitted this 9th day of April, 1940.

W. H. SPAULDING,
STONEY, ROULEAU, STONEY & PALMER,
Attorneys for James Irvine.

[Endorsed]: Filed Apr. 9, 1940. [289]

[Title of District Court and Cause.]

DESIGNATION BY DEFENDANTS AND APPELLEES OF ADDITIONAL PORTIONS OF RECORD TO BE INCLUDED IN THE RECORD ON APPEAL

Defendants and appellees Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company, West End Land Company and James Irvine hereby designate the following portions of the record, proceedings, and evidence to be included in the record on appeal in addition to the portions of the record, proceedings and evidence designated by complainant and appellant to be contained in the record on appeal, in conformity to Rule 75(a) of the Federal Rules of Civil Procedure:

(1) Order for transfer of suit to Southern Division of Northern District of California, dated and filed September 8, 1930;

(2) Stipulation for view of premises, filed August 16, 1939. [290]

(3) This designation of additional portion of record to be included in record on appeal.

HENRY E. MONROE
J. M. MANNON, JR.
A. CRAWFORD GREENE
ROBERT L. LIPMAN
Attorneys for defendants and appellees Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company, and West End Land Company

W. H. SPAULDING
THOMAS E. PALMER
STONEY, ROLEAU, STONEY & PALMER
Attorneys for defendant and appellee James Irvine

[Endorsed]: Filed Apr. 17, 1940. [291]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 291 pages, numbered from 1 to 291 inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the designations for contents of record on appeal in the cause entitled United States of America, vs. Mary W. Stewart,

et al., In Equity Number 2685-S, as the same remain on file and of record in the office of the Clerk of said Court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is $78.05; that said amount has been charged against the United States.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 22nd day of April, A. D. 1940.

[Seal] WALTER B. MALING,
Clerk,
By B. E. O'HARA,
Deputy Clerk. [292]

[Endorsed]: No. 9507. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Mary W. Stewart, et al., Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 24, 1940.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9507

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY W. STEWART, et al.,

Appellees.

STATEMENT OF POINTS RELIED UPON BY APPELLANT ON APPEAL

Comes now the United States of America, the appellant herein, appearing by its attorneys, and pursuant to Rule 19(6) of the Rules of this Court, files the following statement of the points upon which the appellant will rely upon appeal.

1.

The District Court erred in making Findings of Fact and Conclusions of Law and entering judgment against complainant for the reason that said Findings are not supported by and are contrary to the evidence, set forth erroneous conclusions of law, and are contrary to its findings of fact in the case of United States v. O'Donnell, et al., Equity No. 2787-S, and the conclusions of law and judgment are not supported by and are contrary to established law.

2.

The District Court erred in holding in its opinion and order filed August 24, 1939, that complain-

ant take nothing by its suit and [293] that defendants have judgment as prayed for in their several answers for the reason that said opinion and order are not supported by and are contrary to the evidence, set forth erroneous conclusions of law, and are contrary to its findings of fact in the case of United States v. O'Donnell, et al.

3.

The District Court erred in failing to adopt the findings of fact and conclusions of law requested by complainant.

4.

The District Court erred in denying complainant's motion to amend its findings by striking therefrom all parts of paragraphs 3, 5, 6, 7, 8, and 10, relating to its findings of fact that the lands involved are not, and were never, physically a part of Mare Island, said motion having been made upon the grounds that said findings are not supported by and are contrary to the facts, set forth erroneous conclusions of law, and are contrary to its findings of fact in the case of United States v. O'Donnell, et al.

5.

The District Court erred in finding in paragraph 1 of its Findings of Fact that the United States is not the owner of and at no time subsequent to September 28, 1850, ever was the owner of the land described in subdivision II of the amended bill of complaint, and that the defendants, named therein,

are severally the owners of said described lands, since said finding is not supported by and is contrary to the evidence, and states an erroneous conclusion of law.

6.

The District Court erred in finding in paragraph 3 of its Findings of Fact that all of the lands described in subdivision II of [294] the amended bill of complaint were on September 28, 1850, unreserved and unsold public land of the United States, and that all of said lands were then swamp and overflow lands, within the purview and meaning of the Swamp Land Act (9 Stat. 519), and that all of said lands were granted and passed to the State of California under and by virtue of said Act, and that said defendants, named in paragraph 1, are severally the successors in ownership and title to the State of California of said described lands, for the reason that said finding is not supported by and is contrary to the evidence, and states an erroneous conclusion of law.

7.

The District Court erred in finding in its Finding of Fact No. 5 that none of the lands described in subdivision II of the amended bill of complaint was ever a part of Mare Island; that none of said land was, either at the time of said grant to Castro or at the time of any of the proceedings for the confirmation of said grant, a part of the lands known as or referred to as or by the name of Mare Island; that none of said lands was embraced in or covered by the aforesaid grant to said Victor Castro

of Mare Island; that none of said lands was ever occupied by or in possession of said Victor Castro; that none of said lands was in the aforesaid proceedings confirming the said grant made to Victor Castro claimed as a part of or to be a part of Mare Island; that none of said lands was covered by or embraced within the aforesaid confirmation proceedings or the order of confirmation made by said Board of Land Commissioners or said judgment or decree of the United States District Court for the Northern District of California confirming said grant and said order of confirmation of said Board; and that none of said land was purchased or acquired by the complainant in or as a part of its purchase of said Mare Island, for the reason that said Finding is not supported by and is contrary to the evidence and is contrary to its findings of fact in the case of United States v. [295] O'Donnell, et al.

8.

The District Court erred in finding in that part of its Finding of Fact No. 5, that Dutchman's Slough, also known as Boat Cut-off, is and ever since prior to 1841, has been a natural navigable body of water, cutting off all of said lands lying to the east and northeast thereof from all of the remaining lands described in Exhibit A attached to said findings and all of the land lying within said Mare Island Navy Yard Reservation, for the reason that it is not supported by and is contrary to the evidence and sets forth an erroneous conclusion of law.

9.

The District Court erred in finding in its Finding of Fact No. 6 that the survey of Mare Island and the plat thereof, as made and prepared in 1877 by James A. Freeman, United States Deputy Surveyor, was not approved, either expressly or impliedly, by the Surveyor General of California, by the Commissioner of the General Land Office, nor by the Secretary of the Interior, for the reason that it is not supported by and is contrary to the evidence, sets forth an erroneous conclusion of law, and is contrary to its findings of fact in the case of United States v. O'Donnell, et al.

10.

The District Court erred in finding in paragraphs numbered 7 and 8 of its Findings of Fact "that none of the land described in Subdivision II of the amended bill of complaint was included or embraced within the lands so exempted and reserved and none of said land was exempted or reserved from the sale by Executive Order or was subject to reservation at any time subsequent to September 28, 1850", for the reason that said findings are not supported by and are contrary to the evidence, set forth erroneous conclusions of law, and are contrary to [296] its findings in the case of United States v. O'Donnell, et al.

11.

The District Court erred in finding in paragraph 9 of its Findings of Fact "that each of said patents

is in all respects valid and in full force and effect" for the reason that said Finding is not supported by and is contrary to the evidence, and for the further reason that it sets forth an erroneous conclusion of law.

12.

The District Court erred in making its Finding of Fact No. 10 and paragraphs (a), (b), (c), and (d) thereunder, finding in substance that the southeasterly boundary of Survey 569 has been established, recognized, and acquiesced in by the United States as the line beyond which said Mare Island Reservation did not extend, and that at no time since 1890 has the United States asserted or attempted to assert or exercise jurisdiction, dominion or sovereignty over any of the lands within said Survey 569 as a part of said Mare Island Reservation, for the reason that said Finding sets forth erroneous conclusions of law, is irrelevant and immaterial, and is, in part, not supported by and is contrary to the evidence.

13.

The District Court erred in finding in its Finding of Fact No. 11 the several amounts paid by defendants for the purchase, development, and improvement of the lands described in Exhibit "A" attached to said Findings of Fact and Conclusions of Law for the reason that said Finding is based upon incompetent, irrelevant and immaterial evidence, and is foreign to any issue involved in this case;

and said Finding does not constitute a legal defense against the United States. [297]

14.

The District Court erred in holding in paragraph 1 of its Conclusions of Law that this action is barred by the statute of limitations (Sec. 8 of the Act of March 3, 1891 (26 Stat. 1099), Title 43 U. S. C. sec. 1166) as to all lands described in Exhibit "A" attached to said Findings of Fact and Conclusions of Law, embraced in swamp land patents 72 and 152 for the reason that it is not supported by and is contrary to established law.

15.

The District Court erred in holding in paragraph 2 of its Conclusions of Law that the United States is not the owner of or has any right, title or interest in or to the lands or any of the lands described in subdivision II of the amended bill of complaint or in Exhibit "A" attached to said Findings of Fact and Conclusions of Law for the reason that it is not supported by and is contrary to established law.

16.

The District Court further erred in its holding in paragraph 2 of said Conclusions of Law for the reason that it is based upon findings of fact which are not supported by and are contrary to the evidence, namely, the finding that the boundaries and extent of Mare Island, as granted by the Republic

of Mexico to Victor Castro, and as confirmed by the Board of Land Commissioners, did not include the land described in subdivision II of the amended bill of complaint.

17.

The District Court further erred in its holding in paragraph 2 of said Conclusions of Law for the reason that said holding is based in part upon findings of fact dealing with defendant's affirmative de-
[298] fense of equitable estoppel and established public boundary which are not available to the defendants against the United States as a matter of law.

18.

The District Court erred in refusing to adopt complainant's requested Finding of Fact No. 19 that its Findings of Fact in the case of United States v. O'Donnell, et al., that the lands within Survey 34, the neck or isthmus of the land adjoining the land on the high area on the northwest and adjoining the lands involved here on the southwest were and are a part of Mare Island, and as such were included in the area, is also determinative in this case that the lands described in subdivision II of the amended bill of complaint were and are a part of Mare Island, and that its findings in United States v. O'Donnell, et al., relative to the issue as to what lands constitute Mare Island, to-wit, Nos. IVa, VII, VIII, XVI, XX, XXV, XXVII XXX, XXXVI, XXXIX, XLI, XLV,

XLVI, XLVII, and L be accepted and incorporated herein as findings in this case.

19.

The District Court erred in admitting in evidence over complainant's objections the testimony of defendants' witnesses F. E. Knight, Harold Casebolt, and F. W. Rush, offered in support of defendants' affirmative defense of equitable estoppel and established public boundary, for the reason that said testimony was irrelevant, immaterial, incompetent, and could not as a matter of law affect the title of the United States.

20.

The District Court erred in admitting in evidence over complainant's objections the testimony of defendants' witnesses, [299] H. D. Butler, John B. Coleman, Olga D. Sievert, Myford Irvine, George Cross, A. O. Stewart, and W. C. Heyer, offered in support of defendants' affirmative defense of equitable estoppel for the reason that the testimony of said witnesses was irrelevant, immaterial and incompetent and could not as a matter of law affect the title of the United States.

21.

The District Court erred in admitting in evidence over complainant's objections the stipulated fact that the lands involved have been assessed and taxed by the State of California each year since 1882, for the reason that said evidence was irrelevant,

immaterial, and incompetent, and could not as a matter of law affect the title of the United States.

22.

The District Court erred in admitting in evidence over complainant's objections the stipulated fact that since 1890 a number of civil cases have been brought and presented in the courts of the State of California pertaining to the lands involved in this case, for the reason that said evidence was irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States.

23.

The District Court erred in admitting in evidence over complainant's objections defendants' Exhibit 4, being a copy of Survey No. 569, for the reason that said Exhibit was irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States.

24.

The District Court erred in admitting in evidence over [300] complainant's objections defendants' Exhibit No. 9, being a certified copy of a map recorded in the Recorder's Office in *Saloma* County on November 10, 1913, for the reason that said Exhibit was irrelevant, immaterial, and incompetent, and could not as a matter of law affect the title of the United States.

25.

The District Court erred in admitting in evidence over complainant's objections the judgment roll in the case of San Francisco Savings Union Bank v. Irwin, 28 Fed. 708, and defendants' Exhibit No. 20, a certified copy of the appointment of Judge Rhodes as Special Assistant United States Attorney in the Irwin case, and defendants' Exhibit No. 21, a letter dated September 20, 1886, from the Acting Attorney General to A. L. Rhodes, and the Court erred in denying the Government's motion to strike said letter of September 20, 1886, for the reason that said exhibits were irrelevant, immaterial, and incompetent, and could not as a matter of law affect the title of the United States.

26.

The District Court erred in admitting over complainant's objections defendants' Exhibits 22, 23, 24 and 25, being copies of franchises for a toll road to defendant Sears Point Toll Road Company, by the County of *Saloma,* for the reason that said exhibits were irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States.

27.

The District Court erred in admitting over complainant's objection defendants' Exhibit 26, being a certified copy of an order of the Board of Supervisors establishing Reclamation District No. 186,

[301] for the reason that said exhibit was irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States.

28.

The District Court erred in admitting in evidence over complainant's objections a letter from L. E. Cross dated December 5, 1896, to the Commandant of Mare Island Navy Yard, and the Commandant's reply dated December 11, 1896, and the Court further erred in denying complainant's motion to strike said letters, for the reason that said evidence was irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States, and for the further reason that no foundation was laid, and said letters were hearsay.

29.

The District Court erred in admitting in evidence over complainant's objections defendants' Exhibit 27, being a letter dated October 18, 1912, from the First Assistant Secretary of the Interior to the Secretary of the Navy, defendants' Exhibit 28, being a letter in reply dated February 1, 1913, from the Acting Secretary of the Navy to the Secretary of the Interior, and defendants' Exhibit 29, being a blueprint, R-212, which accompanied the letter dated February 1, 1913, for the reason that said Exhibits were irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States.

30.

The District Court erred in admitting in evidence over complainant's objections defendants' Exhibit 37, being a letter dated August 17, 1923, entitled "Motion for rehearing", defendants' Exhibit 38, being a letter dated September 19, 1923, addressed to the Surveyor [302] General from the Assistant Commissioner of the General Land Office, and defendants' Exhibit 39, being a circular letter written by the Commissioner of the General Land Office to the various Surveyors General, for the reason that said Exhibits were irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States.

31.

The District Court erred in admitting in evidence over complainant's objections defendants' Exhibit 45, being a letter from A. O. Stewart stating the amount Mrs. Stewart paid for the land claimed by her, for the reason that said exhibit was irrelevant, immaterial, and incompetent and could not as a matter of law affect the title of the United States.

FRANK J. HENNESSY,
United States Attorney.
ESTHER B. PHILLIPS,
Assistant United States Attorney.
Attorneys for Appellant.

CLIFFORD E. FIX,
Special Attorney,
Department of Justice,
Washington, D. C.

Receipt of a copy of the within Statement is hereby admitted this 22nd day of April, 1940.

W. H. SPAULDING,
THOMAS E. PALMER,
STONEY, ROULEAU,
STONEY & PALMER,
HENRY E. MONROE,
J. M. MANNON, JR.,
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
McCUTCHEN, OLNEY, MANNON & GREENE,
Attorneys for Appellees.

[Endorsed]: Filed April 24, 1940. Paul P. O'Brien, Clerk. [303]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD TO BE PRINTED IN THE RECORD ON APPEAL

To the Clerk of the Circuit Court of Appeals for the Ninth Circuit:

The Appellant above-named, having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered herein on November 1, 1939, hereby designates the following parts of the record, proceedings and evi-

dence for printing in the record on appeal, in conformance with Rule 19(6) of the Rules of this Court.

(1) The Amended Bill of Complaint, filed May 21, 1931, and

(2) The "Amendments to Amended Bill of Complaint", filed May 23, 1932.

(3) Answer of Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company and West End Land Company filed February 14, 1936. Omit description of the various parcels of lands, reciting the following: "Here follows description of various parcels of lands with statement of ownership substantially as they appear in Exhibit 'A' to the Judgment."

(4) First Amendment to said Answer filed May 25, 1937.

(5) Second Amendment to said Answer filed June 15, 1937.

(6) Answer of James Irvine filed March 18, 1936. Omit Description of parcel of land and recite the following: "Here follows description of parcel of land with statement of ownership substantially as it appears in Exhibit 'A' to the Judgment."

(7) First Amendment to said Answer filed May 25, 1937. [304]

(8) Second Amendment to said Answer filed June 15, 1937.

(9) Order substituting Meta S. Healy as party defendant in place of W. H. Healy, deceased, filed April 20, 1936.

(10) Order of Dismissal with prejudice as to defendants Russ Investment Company, Henry A. Kendall, Joseph Dubeault, Wilfred Dubeault and Charles J. Monahan, filed April 9, 1937.

(11) Order of Dismissal as to defendant Meta S. Healy, filed May 26, 1937.

(12) Stipulation in lieu of answer filed on behalf of defendant Pacific Gas & Electric Company, filed August 30, 1939.

(13) Reporter's Transcript of the testimony and evidence adduced at the trial.

(14) The Opinion of the Trial Court, filed August 24, 1939.

(15) Rulings on certain motions and objections, filed August 24, 1939.

(16) Complainant's objections to Defendants' Proposed Findings of Fact and Conclusions of Law, and Complainant's Proposed Findings of Fact and Conclusions of Law, filed November 1, 1939.

(17) Order allowing Complainant time to file objections, to Defendants' Proposed Findings, filed Nov. 1, 1939.

(18) The Findings of Fact and Conclusions of Law as signed by the Court, filed November 1, 1939, omitting from the printed record Ex-

hibit "A" to the Findings and Conclusions, excepting the first line appearing on page 1 of Exhibit "A" reading: "It is the fact and the Court finds that" and thereafter recite the following: (Here follows statement of lands owned by various defendants, including particular description of the lands owned by each, in identical form and content, as appears in Exhibit "A" to the Judgment.)

(19) Judgment for defendants filed November 1, 1939, including Exhibit "A" attached thereto.

(20) Complainant's motion to amend Findings filed November 9, 1939.

(21) Order denying Complainant's motion to Amend Findings, filed November 13, 1939.

(22) Notice of appeal filed January 29, 1940.

(23) Order entered February 23, 1940, extending the time within which to file the designation of the record on appeal and to docket the record. [305]

(24) Order entered April 9, 1940, transmitting original exhibits to the Clerk of the Circuit Court of Appeals for the Ninth Circuit and to be held by him for use in connection with said appeal.

(25) The designation of the record on appeal, directed to the Clerk of the District Court.

(26) The following original exhibits trans-

mitted to the Clerk of the Circuit Court of Appeals for the Ninth Circuit pursuant to the order of the District Court entered April 9, 1940:

Exclude from the printing all of Exhibit D-1, being a certified copy of transcript in Case #307 before the Board of Land Commissioners, United States v. Bissell and Aspinwall, except the decree of the Board of Land Commissioners.

Exclude from the printing all of Exhibit D-2, being a record of the same case in the United States District Court, Case #311, except the decree of the District Court.

Include the following:

Exhibit E-1—The Smith report to the Secretary of War and Navy, dated March 31, 1850 (excluding Beechey's map attached thereto which is the same as Complainant's Exhibit K-1).

Exhibit E-2—Reservation withdrawal from entry of President Fillmore, dated November 6, 1850, attached to Smith's report.

Exhibit F-1—Sloat Board Report, dated November 6, 1850.

Exhibit F-2—Plans.

Exhibit G—Presidential reservation of Mare Island with letters attached.

Exhibit H—Deeds to Mare Island, and accompanying records, filed in Sonoma County.

Exhibit K-1—F. W. Beechey map.

Exhibit K-2—Wilkes Map (1844).

Exhibit K-3—Map made by French Naval Office (1844), (excluding title page).

Exhibit K-4—Stuart Map (1849).

Exhibit K-5—Gibbes Map (1851).

Exhibit K-6—General chart of Farallones and entrance to Bay of San Francisco. Ringgold (1852).

Exhibit K-7—Ringgold Sheet #2.

Exhibit L-6—Topographic survey, San Francisco Bay and plane table sheet #22 (1856).

Exhibit L-9—Coast and geodetic survey chart (1859). [306]

Exhibit L-11—Coast and Geodetic Survey of San Pablo Bay (1863).

Exhibit N—Small scale reproduction of Exhibits M-1 to M-6, inclusive.

Exhibit P-1—Sanger Board report (exclude Exhibits P-2-3-4, being 3 maps accompanying Sanger Board report).

Exhibit Q—Survey of Mare Island by James Freeman, and accompanying papers.

Exhibit R—Three plats representing records of automatic tide gauge for November, 1929, February, 1905, and June, 1905.

Exhibit T—Series of profiles and cross sections of Mare Island prepared by Carlson.

Exhibit U—Aerial photograph.

Exhibit V-1—Aerial photograph.

Exhibit V-2—Tracings of shore line of photographic reproductions of two surveys, Cutts and Rogers, 1856 and 1857.

Exhibit W—Map entitled "Central California in 1848."

Exhibit X—Certified copy Mexican land grants in California prepared by State Surveyor General of California, Bancroft library.

Exhibit Y—Coast and Geodetic survey records showing description of triangulation section, Sonoma Pole.

Exhibit Z—Copy of official log of Mare Island dated April 15, 1873.

(27) This designation of parts of record to be printed in the record on appeal.

(28) Statement of the points to be relied on by appellant on the appeal.

(29) Stipulation and order relating to the consideration by the Circuit Court of Appeals of original exhibits omitted from the printed record.

(30) Designation by defendants and appellees of additional portions of record to be included in the record on appeal.

(31) Order for transfer of suit to Southern Division of the Northern District of California, dated and filed September 8, 1930. [307]

(32) Stipulation for view of premises filed August 16, 1939.

FRANK J. HENNESSY,
United States Attorney.
ESTHER B. PHILLIPS,
Assistant United States Attorney,
Attorneys for Appellant.

CLIFFORD E. FIX,
Special Attorney,
Department of Justice,
Washington, D. C.

[Endorsed]: Filed Apr. 24, 1940. Paul P. O'Brien, Clerk. [308]

[Title of Circuit Court of Appeals and Cause.]

STIPULATION FOR CONSIDERATION OF ORIGINAL EXHIBITS, DOCUMENTS, PAPERS, MAPS, ETC. OMITTED FROM THE PRINTED RECORD.

It is hereby stipulated and agreed by and between Appellant and Appellees that all of the original documents, papers, maps, etc. offered in evidence upon the trial of the above-entitled case and ordered to be transmitted to the Clerk of the above-entitled Court by order of the District Court, dated April 9, 1940, be considered by the above-entitled Court as a part of the record on appeal; and that those original documents, papers, maps, etc. not designated for inclusion in the printed transcript

of record be used and considered by the above-entitled Court upon this appeal with the same force and effect as though the same had been printed and made a part of the printed transcript of the record, and [309] that upon the termination of this appeal all of said original documents, papers, maps, etc. be returned to the Clerk of the District Court from which this appeal is taken.

Dated: April 24, 1940.

FRANK J. HENNESSY,
United States Attorney,
ESTHER B. PHILLIPS,
Assistant United States Attorney
(Attorneys for Appellant).

HENRY E. MONROE,
J. M. MANNON, JR.,
A. CRAWFORD GREENE,
ROBERT L. LIPMAN,
McCUTCHEN, OLNEY,
MANNON & GREENE,
W. H. SPAULDING,
THOMAS E. PALMER,
STONEY, ROULEAU,
STONEY & PALMER,
Attorneys for Appellees.

ORDER

On reading the above stipulation and good cause appearing therefor, it is hereby ordered that the foregoing stipulation be and is hereby approved,

and that all of said original documents, papers, maps, etc., ordered to be transmitted to the Clerk of this Court in the above-entitled cause, whether said exhibits appear in the printed transcript of record on appeal or not, shall be used and considered by this court upon said appeal, notwithstanding the provision of Rule 19 of the rules of this court, with the same force and effect as though the same were incorporated in and made a part of the printed transcript of record.

Dated: April 24, 1940.

FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed April 24, 1940. Paul P. O'Brien, Clerk. [310]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLEES OF ADDITIONAL PORTIONS OF RECORD TO BE PRINTED IN THE TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

Appellees Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company, West End Land Company and James Irvine hereby designate the following portions of the record, proceedings and evidence for printing in the transcript

of record on appeal, in addition to the portions of the record, proceedings and evidence designated by the appellant to be printed in the transcript of record on appeal, in conformity to Rule 19 of the rules of said Court:

I.

Original documents, maps, papers, etc. offered in evidence upon the trial of the above entitled cause and order transmitted to the Clerk of the United States Circuit Court of [311] Appeals for the Ninth Circuit by order of the District Court dated April 9, 1940, with certification by the Clerk of the District Court, as follows:

Complainant's Exhibit L-1. Chart of Mare Island Straits by Williams and Blunt, 1849.

Complainant's Exhibit L-2. Cutts' Map of Mare Island, 1851, Registry No. 316.

Complainant's Exhibit L-5. Coast survey map of Mare Island, 1851.

Complainant's Exhibit L-8. Coast survey map of Mare Island Straits by Alden, Registry No. 544.

Complainant's Exhibit L-10. Coast survey map of Petaluma and Napa Creeks, 1861.

Complainant's Exhibit L-14. Topographical re-survey by Lawson and Walker, 1886, No. 1825.

Complainant's Exhibit L-15. Coast and geodetic survey from plate 3197, Edition of 1915, No. 5533.

Complainant's Exhibit S-1. Contour map by Rousseau, 1906.

Complainant's Exhibit S-2. Contour map by Carlson, 1917.

Defendants' Exhibit 1. California Geological Survey map, 1873.

Defendants' Exhibit 2. Mare Island quadrangle map.

Defendants' Exhibit 3. Napa quadrangle map.

Defendants' Exhibit 4. Certified copy of Swamp Land Survey 569.

Defendants' Exhibit 5. Certified copy of state patent to Pearson in 1874.

Defendants' Exhibit 6. Swamp Land Patent 72.

Defendants' Exhibit 7. Swamp Land Patent 152.

Defendants' Exhibit 8. Patent No. 937055.

Defendants' Exhibit 9. Certified copy of map of Mare Island Navy Yard Reservation recorded by Commandant on November 10, 1913. [312]

Defendants' Exhibit 10. Photostatic reproduction of Map by J. H. Coulton & Co., 1855.

Defendants' Exhibit 11. Map of gold region of California by Ellis, 1850.

Defendants' Exhibit 12. Photostatic reproduction of portion of Map of United States by the General Land Office, 1866, showing military reservations.

Defendants' Exhibit 13. Map of gold and quicksilver regions by Lieut. E. O. C. Ord, 1848.

Defendants' Exhibit 14. Reproduction of portion of Official Map of Solano County, 1890.

Defendants' Exhibit 15. Reproduction of portion of Official Map of Solano County, 1909.

Defendants' Exhibit 16. Reproduction of portion of Official Map of Solano County, 1925.

Defendants' Exhibit 17. Photostatic reproduction of the Hilgard chart of 1884.

Defendants' Exhibit 20. Copy of appointment of Judge Rhodes as special assistant attorney for the United States in San Francisco Savings Union v. Irwin.

Defendants' Exhibit 21. Copy of letter from Acting Attorney General to Rhodes directing him to sue out writ of error in the Irwin case.

Defendants' Exhibit 22. Sears Point toll road franchise, dated March 1, 1926.

Defendants' Exhibit 23. Sears Point toll road franchise, dated April 4, 1927.

Defendants' Exhibit 24. Sears Point toll road franchise, dated June 4, 1928.

Defendants' Exhibit 25. Sears Point toll road franchise, dated July 2, 1928.

Defendants' Exhibit 26. Certified copy of order creating Reclamation District 186.

Defendants' Exhibit 27. Certified copy of letter from Secretary of the Navy to Assistant Secretary of Interior dated October 18, 1912.

Defendants' Exhibit 28. Certified copy of letter from Acting Secretary of Navy to Secretary of the Interior dated February 1, 1913.

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Defendants' Exhibit 29. Certified copy of blue print No. R-212.

Defendants' Exhibit 30. Letter dated July 25, 1879, from Acting Commissioner to Wagner.

Defendants' Exhibit 31. Letter of August 7, 1897, from Acting Commissioner to Wagner.

Defendants' Exhibit 32. Certified copy of Wagner's letter of August 7, 1879, to the Commissioner returning the Freeman Survey.

Defendants' Exhibit 33. Hanley protest of July 5, 1879, to the Surveyor General.

Defendants' Exhibit 34. Hanley protest of July 16, 1879, to the Commissioner.

Defendants' Exhibit 35. Copy of excerpts from Surveyor General's report of August 22, 1878, showing death of Ames, etc.

Defendants' Exhibit 36. Certified copy of letter of February 28, 1921, to the Surveyor General from the Acting Commissioner.

Defendants' Exhibit 37. Certified copy of letter of August 17, 1923—Decision 28814.

Defendants' Exhibit 38. Certified copy of letter of September 19, 1923, to the Surveyor General directing closure of survey.

Defendants' Exhibit 39. Certified copy of circular by Commissioner with regard to return of township plats.

Defendants' Exhibit 40. Correspondence between the Attorney General and the Governor of California prior to the Cession Act of 1854.

Defendants' Exhibit 41. Plat of Township 3 North, Range 5 West.

Defendants' Exhibit 42. Plat of Township 4 North, Range 5 West.

Defendants' Exhibit 43. Plat of Township 3 North, Range 4 West.

Defendants' Exhibit 44. Plat of Township 4 North, Range 4 West.

Defendants' Exhibit 45. Letter of June 15, 1937, from A. O. Stewart to Judge Olney.

Certified copy of judgment roll in San Francisco Savings Union v. Irwin, No. 3140. [314]

II.

This designation of additional portions of the record to be printed in the transcript of record on appeal.

HENRY E. MONROE,
J. M. MANNON, JR.,
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ROBERT L. LIPMAN,
Attorneys for defendants and appellees Mary W. Stewart, Sears Point Toll-Road Co., American Trust Company, Bay Land Company, Field and Tule Land Company, and West End Land Company.

W. H. SPAULDING,
THOMAS E. PALMER,
STONEY, ROULEAU,
STONEY & PALMER,
Attorneys for defendant
and appellee James Irvine.

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Service of the within designation and receipt of a copy thereof admitted this 26th day of April, 1940.

FRANK J. HENNESSY,
United States Attorney.

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Asst. United States Attorney,
Attorneys for Appellant.

[Endorsed]: Filed April 26, 1940. Paul P. O'Brien, Clerk. [316]